United States Court of Appeals for the Second Circuit

APPENDIX

77-7037

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In The

United States Court of Appeals

For The Second Circuit

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NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York.

JOINT APPENDIX - VOLUME 12

UNITED STATES COURT OF APPEALS
FILED
AUG 8 1977
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SECOND CIRCUIT

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when you received the memorandum?

"A Probably referred it to Mr. Crawford, who was a vice-president in charge of the distribution staff.

"Q Do you recall making any recommendations to Mr. Crawford or any other person that legal staff should be brought in?

"A I don't recall specifically, but I would expect Mr. Crawford would probably discuss it with the legal staff.

"Q Do you recall any other communications with any person concerning Nabcor other than counsel? "

MR. PERSON: Page 58, line 6:

(Pause.)

THE COURT: Go ahead.

MR. PERSON: I am trying to see if I can eliminate this.

THE COURT: All you have to do is read the answer. Line 8.

MR.PERSON: Line 8.

"A Mr. Crawford probably reported back to me on the situation, but I really don't have any clear recollection of the specifics of it at this time.

"Q Do you recall what it was in the advertisement that was significant?

Was there anything significant in the advertisement that suggested that it be called to your attention?"

THE COURT: Where are you reading?

MR. PERSON: Page 59, rephrasing the question.

Line 4:

"Q Do you recall anything significant about the advertisement yourself?

"A My recollection about the signficance of the advertisement was that it was offering to sell General Motors franchises, and that was a different approach, and I think that probably awakened my curiosity.

"Q General Motors cars or General Motors franchises?

"A As I recall, it was selling a franchise to purchase General Motors cars.

"Q Why was that unusual to you, if it was?

"A Well, I don't presume an individual has a right to sell General Motors franchises.

"Q Did an individual then have a right to sell General Motors cars?

"A Any individual could sell a General Motors car.

"Q Did you know of any persons not franchised by GM who were selling GM cars, new cars at that time?

"A I can't name you any of them, but there were people who were selling General Motors cars who were not General Motors dealers."

Page 60, lines 2 through 7:

"Q And these were new cars?

"A Alleged new cars.

"Q Do you believe that they are not new cars for any reason if a non-franchised dealer sells them?

"A In some cases they might have been, in other cases, they might not have been.

"Q Did you have General Motors adopt the position that any resales of cars by non-franchised dealers would be selling a used car necessarily to the consumer back in 1966/1967?

"A I am not too sure that I understand the question."

Mr. Kleinbard then asked, "Are you asking Mr. Roche whether in 1966 and 1967 General Motors adopted that policy?"

I responded, "Was there a policy in effect during 1966 or 1967 that any sales, any resales of what -- of a car bought by a franchised dealer and sold to a non-franchised dealer, and resold to a consumer would be the resale of a used car to the consumer?

"MR. KLEINBARD: For what purpose?

"MR. PERSON: For any purpose.

"Q Was it considered by GM as a matter of GM policy that that would be the resale by the non-franchised dealer of the used car?

"A It would depend on how the title of the car was transferred, I would imagine.

"Q And can you think of any consequences with respect to warranty policy that developed as a result of that?

"A Not specifically, although the warranty policies have changed from time to time over the years.

"Q Do you know if the consumer was able to obtain a full warranty in a situation such as that?

"A In some periods if the purchaser was a second owner, he would not have had warranty coverage.

"Q Who was the first owner then, the non-franchise dealer?

"A Presumably, yes."

Page 65, lines 8 to 11 and 21 through 25.

There are four documents marked for identification and these were Plaintiffs' Exhibits 285, 286, 287 and 288.

"Q Mr. Roche, then, will you please take a look at these four documents?

"A Yes.

"Q Have you seen those documents before?

"A I probably have, yes. I have no specific recollection, but I am sure I must have seen them at the time."

Now these documents are in evidence and the first one is a letter --

THE COURT: What exhibit numbers?

MR. PERSON: 288, 286, 287 and 285.

THE COURT: And they are in evidence?

MR. PERSON: Yes, your Honor.

THE COURT: What are they?

MR. PERSON: 288 is a letter dated June 7, 1966 from Paul Wetzel to Paul Svoboda, both in the New York GM office and each has a stamp at the top saying "Received June 7th, 1966, F. D. Donner and received June 9, 1966, J. M. Roche.

Exhibit 286 is a letter dated June 17, 1966 from Mr. Feeley to Mr. Crawford.

THE COURT: What is the date of that?

MR. PERSON: June 17, 1966, received June 20, 1966 by Mr. Crawford and stamped at the top.

THE COURT: Did copies go to Mr. Roche and Mr. Donner?

MR. PERSON: No.

Exhibit 287 is a memorandum from Mr. Crawford to Mr. Feeley dated June 20,1966 with a note directed to Mr. O'Conner, handwritten, with a stamp received, June 22, 1966 by Mr. O'Conner.

Fourth one, Exhibit 285, is a letter dated July 1, 1966, subject, Nabcor, addressed to Mr. J. M. Roche, president, from Mr. O'Conner, and it is stamped received July 1, 1966, J.M. Roche.

THE COURT: What is the date of that?

MR. PERSON: July 1, 1966.

I would like to be able to have the jury look at these letters, your Honor.

(Letters given to the jury.)

THE COURT: Are you going to give them to the jury?

MR. PERSON: I just handed them to the jury.

THE COURT: You cannot read the letters? Why not read them?

(Mr. person read to the jury from Exhibits 285, 286, and 287 in evidence.)

Continuing at page 66, line 4 to the end of the page.

"Q You stated in an affidavit filed in connection with your motion for summary judgment that a copy of memorandum Exhibit 288 was forwarded to me by Frederick G. Donner.

"Is that statement true?

"A Yes.

"Q Could you point out Exhibit 288, it is the bottom right-hand corner.

"A I think this is the one, but as I recall it, I had also received probably a copy of this.

"Q Is this the advertisement you were referring to before?

"A Yes.

"Q Could you read what part of the advertisement you believe was significant to you back in 1966 when you saw that memorandum?

"A I can't really read this very clearly here now. Refundable investment is apparently it, but the part really which I referred was the $5,000, purchase a franchise for $5,000, which is contained in this report.

"Q I see."

Mr. Kleinbard pointed out it was the second paragraph in the letter. A group of us tried to read it and he came up with the ad that was:

(Mr. Person read to the jury from Defendants' Exhibit 288 in evidence.)

Page 68, line 8 to the end.

"Q Mr. Roche, what was the part of that advertisement that was most significant to you, once again?

"A Well, I think I was considering this in connection with the advertisement as well as the explanation in the letter. But, here it says territories are available.

"So, here is somebody advertising a territory for the distribution of automobiles.

"Q It says in the middle paragraph, 'distribute cars for GM, Ford and Chrystler Corporations.'

"A That is what he was told. I am referring to the advertising now. It says territories open in the ad. And it also says, investment five to $10,000.

"Q Did General Motors at that time have franchised dealers with areas of sales responsibility in the United States?

"A Yes.

"Q And loosely, these areas of sales responsibilities are non-exclusive territories?

"A Entirely non-exclusive.

"Q And this advertisement indicated to you that a company referred to as Nabcor in this Plaintiff's Donner 3, Ex. 288, of GM, was offering franchises which had territories for sale of GM, Ford and Chrysler products, automobile products, is that correct?

"A It said automobiles. I would assume so.

"Q Was that taken by you as being in some type of competition with General Motors?

"A Not necessarily, no because they were offering franchise people to sell General Motors cars. There was only one General Motors. And the cars would have had to come from General Motors.

"Q But the thing that is unusual is for an individual to offer to franchise General Motors dealers. I think we were capable of doing that ourselves.

"Q And you didn't know of any other companies offering a GM franchise that was not itself GM?

"A That's correct.

"Q Is that correct, at that time?

"A That's correct.

"Q Did General Motors have any divisions at that time in '66 which sold cars at retail?

"A Yes."

Page 70?

"Q And could you identify about how many it had at that time, say Chevrolets?

"A I think that there might have been maybe one Chevrolet outlet.

"Q About how many all told were there of all five?

"A Passenger cars?

"Q Yes.

"A I would say in 1966 there might have been 15, 18 in the United States."

THE COURT: Let's take our lunch. We are not quite finished with this.

(Luncheon recess to 2:15 p.m.)

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AFTERNOON SESSION

2.15 P.M.

THE COURT: Anything more on the Roche deposition?

MR. PERSON: Yes, your Honor.

MR. KAPLAN: Your Honor, we have reviewed the documents received from the Department of Justice with respect to Nabcor and we have a stipulation with respect to what is in it.

MR. PERSON: I am not sure I will agree.

THE COURT: Let us finish the Roche deposition.

MR. PERSON: On page 70, lines 13 through 25. Prior to this Mr. Roche answered a question about how many GM-owned dealerships there were in the United States in 1966, and he said 15 or 18.

"Q Are you familiar with Motors Holding Company?

"A Yes."

MR. KLEINBARD: I object to that.

THE COURT: Sustained.

MR. PERSON: It is relevant as far as Bain Chevrolet is concerned.

MR. KAPLAN: We can stipulate to anything

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that is necessary.

THE COURT: I don't think we have to have a lot of things read. These are not difficult points.

MR. PERSON: Well, we can stipulate Motors Holding --

THE COURT: When and if we get to talking about Bain Chevrolet, I am sure the relationships, if any, will all be stipulated, no problem.

Anything else in this deposition?

MR. PERSON: Yes, your Honor. Page 72, line 25:

"Q Do you still believe, in the light of this discussion, that Nabcor was not in any way in competition with interests of GM, by selling franchises for the sale of GM automobiles in various territories?"

MR. KLEINBARD: I object, your Honor, because it is certainly unintelligibe in the light of this discussion.

THE COURT: Just a minute. That refers back to about the Motors Holding Company.

MR. PERSON: No, with respect to their divisions of GM which sell cars.

THE COURT: Let me read the answer, there is an answer.

Why don't you read the question and then read the answer.

MR. PERSON: "Q Do you want to reconsider your answer that you gave previously?

"A As I indicated before, General Motors was a manufacturer of cars. General Motors franchises the dealers. We think that is our right and we thought so at the time. And insofar as Nabcor was concerned, we didn't feel that they had any right whatsoever to offer to sell a GM franchise or anybody else.

"Q If they acquire it from a franchised dealer would that change the result any?

"A They had every right to acquire cars from GM -- anybody has a right to acquire from a General Motors dealer. The General Motors dealer has every right in the world to sell the cars to whom he pleases.

"Q So if Nabcor could acquire cars, GM cars, why couldn't it franchise people to distribute cars that were acquired by Nabcor?

"A Well, I presume it probably could have.

"Q You were saying before that it had no right to. I am just wondering how you could arrive at that.

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"A That we get into a full discussion of the franchise system, it seems to me.

"Q I would like to.

"A And our franchise system is based upon the idea that we have a responsibility to the customer and the eventual user of that product.

"Q You are saying that Nabcor couldn't service the cars, is that correct?

"A You are getting into the reasons why we franchise the dealer. We franchise the dealer and we expect he is going to provide the building facilities, personnel, trade service organization, a trained parts organization,he is going to carry a full stock of parts adequate to service the cars that he sells, he is going to be in business in a particular location, to serve the interests of respective purchasers in that area, and this is the heart of our franchise system.

"Q And a company that takes a portion of that business away could interfere with the ability of GM to deliver the full product, the full range of services and product, is that correct?

"A Unless they went into exactly the same kind of setup that a General Motors dealer would.

"Q And you are unaware whether Nabcor had any service facilities? As an automobile broker.

"A I know nothing about Nabcor.

"Q Is it a policy of General Motors to pay its dealers less for servicing than a fair value?"

MR. KLEINBARD: I object to this line, your Honor, general practices. I don't think there is any testimony about that.

THE COURT: Sustained.

MR. PERSON: Page 77, line 4.

MR. KLEINBARD: I object to this too, your Honor.

THE COURT: Sustained.

MR. PERSON: Page 68, line 4.

MR. KLEINBARD: It is a continuation of the same.

THE COURT: Yes. I would sustain an objection to that whole line. It is just general irrelevant talk. If you want to go to 78, line 22, that is the first relevant point I see.

MR. PERSON: Page 79, line 11:

"Q Do you recall receiving Document No. 285, which says Received July 1, J.M. Roche?

"A No, if my time stamp is on it, I presume I did see it.

"Q Exhibit 288, received June 9, J.M. Roche?

"A Yes, wait a minute, this is received by Mr. Donner June 7.

"Q And then two days later --

"A Two days later it was received by me, and the date of this document is July 1. So it couldn't have been attached to it.

"Q Right, so doesn't it appear that the communication -- that you had received a communicatin on or about June 9, and do you know what happened at the time you received that June 9 communication dated June 9, stamped by your stamp?

"A I probably referred it to Mr. Crawford.

"Q And then I have two letters here, Exhibits 286 and 287, one dated June 17, another June 20. And in the June 20 letter from Mr. Crawford to Mr. Feely, it says Note that we are requested to give Mr. Roche a report. Thus I feel our information should be as complete as possible.

"Do you recall in what way Mr. Crawford and/or Mr. Feely were requested by you to give that report?

"A No, I don't. Just that I saw Mr. Craford quite frequently. I saw Mr. Feely very infrequently.

But Mr. Crawford was the vice-president in charge of marketing staff and distribution staff, and I had occasion to consult with him very regularly about sales matters, deliveries and so on. And it is possible in one of those conversations it might have come up. But I have no distinct recollection of it.

"Q Who had the authority to refer a matter to Alpower? Did Mr. Feely have authority to refer this matter to Alpower?

"A Well, I think that really anybody in the corporation who felt they had a problem of sufficient importance, had access to Mr. Power as generalcounsel, and could refer to him or ask him for counsel and advise on a given subject.

"Q May I see --

"A And Mr. Feely was in that category, I am sure.

"Q And Mr. Crawford?

"A And Mr. Crawford.

"Q On July 1 you received Document 285. July 1, I would note, is later than the date on these other three documents Nos. 288, 286 and 287. This document dated July 1 with your name stamped on the document 285 says that at the suggestion of Mr. A.G. Crawford, I am attaching some information that we obtained relating to the subject company. This was addressed to you, J.M. Roche, President.

"Do you recall whether this, either of these letters with Mr. Crawford's name on them and Mr. Feely's name were attached to this document 285 when you received them?

"A No, I would have no way of recalling that at this time. This apparently came to me, 288 apparently came to me from Mr. Donner, and I might have received a copy of it on my own.

"And the letter of June 17 and June 20, I couldn't identify this point whether those were attached or not."

That ends my reading of the designations.

MR. PERSON: Page 31, line 19.

"Q Have you ever spoken to Mr. Belcher about Nabcor?

"A Never."

Page 40, line 5:

"Q Did you receive any complaints that any person was not able to purchase cars for resale without some interference during your presidence?

"A Not to my recollection."

Page 61, line 19:

"Q And did you ever have any discussions during 1966 or 1967 as to the effect of a warranty such as that upon the non-franchised dealer?

"A No, that was never our concern, our warranty concerns were of an entirely different nature.

"Q What were the concerns?

"A The mileage of the car, the use of the car, the age of the car, and what its history had been.

"Q Is that what you believe the second purchaser was defined as in terms of those variables?

"A That is what we were concerned about."

That is all, your Honor.

MR. PERSON: Page 29, lines 2 through 9.

"Q Even with respect to a fleet allotment?

"A A dealer could sell any car he purchased from General Motors to anybody he wished.

"Q Did you sell to a dealer as many cars as he ordered?

"A To the best of our ability. That wasn't always possible, But depending on production schedules and availability of cars. "

We have a stipulation, your Honor.

MR. KAPLAN: Among the documents which the Department of Justice returned which it had obtained from Colonial Cadillac with a number of folders containing information on sales by Colonial to leasing companies for the years '66, '67 and 1968.

I think it is apparent from the document that that refers to model years.

There is only one reference to Nabcor in all these materials. It is a document which reflects the fact that on April 8, 1966 Colonial delivered a 1966 Cadillac to Nabcor. It is contained in one of these folders listing deliveries to leasing companies.

The folders also show the rental and leasing allotments to Colonial for those three model years, and the total number of vehicles delivered by Colonial to rental and leasing companies.

In 1966 the rental and leasing allotment was 40 vehicles; Colonial delivered 180 Cadillacs to rental and leasing companies.

For the 1967 model year the rental and leasing allotment was 43 units. Colonial delivered 200 vehicles to rental and leasing companies.

In 1968 the rental and leasing allotment was 77 units. Colonial delivered 219 vehicles to rental and leasing companies.

The total for the three-year period, 160 units received under the rental and leasing allotment and 599 delivered to rental and leasing companies.

MR. PERSON: There were no documents for any unfulfilled orders of any kind.

MR. KAPLAN: That's right.

THE COURT: Thank you very much.

MR. PERSON: One further thing, that Nabcor was not mentioned as any company getting a fleet allotment.

MR. KAPLAN: That is correct.

THE COURT: Is there another deposition?

MR. PERSON: Yes, your Honor.

It is the transcript of the deposition of Frederick Donner who is a defendant in the action.

Page 4, lines 11 through 25:

"Q Did you become an officer after that?

"A I did.

"Q What year was that?

"A I became a vice-president in 1941.

"Q Any type of vice-president?

"A No, vice-president.

"Q In charge of anything?

"A Yes, but my title was vice-president.

"Q What were you in charge of?

"A Financial staff.

"Q And did you obtain any other office in General Motors after that?

"A I became executive vice-president in 1956 and chairman in 1959.

"Q Is that Chairman of the Board of General Motors?

"Q And did the President report to you at any time?

"A He reported to me, yes.

"Q And did he report to you throughout that period?

"A Yes.

"Q At any time did you report to the President of General Motors throughout that period?

"A You mean by report, was I subordinate to him?

"Q In any respect.

"A No, we worked together. I didn't report to him."

MR. PERSON: Page 19, line 11:

"Q Are you aware of the concept called the fleet allotment?

"A Not in those terms. I don't know what you mean by fleet allotment."

MR. PERSON: Page 23, line 19. I showed Mr. Donner a copy of this California judgment.

"Q Are you familiar with that judgment?

"A I knew of the case. I know of the judgment, yes.

"Q Were you the chief executive officer

during the period of that lawsuit?

"A I was."

MR. PERSON: Page 24, line 22:

"Q Could you tell me did you give any instructions yourself with respect to any procedure for compliance with any of the terms of this judgment?

"A I don't think that would have been my position, no.

"Q And you don't recall if you did?

"A No.

"Q Do you recall having read this judgment at all prior to -- having read it at all?

"A I must have read it. I don't recall what was in it, no.

"Q Can you specify what divisions or persons in General Motors under General Motors policy during 1966 should have been responsible for enforcement of this judgment?

"A I don't know.

"Q Do you know who would know?

"A No, I don't."

MR. PERSON: Page 26, line 24:

"Q Did you ever inquire at any time from August 18, 1966 to the present about compliance

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procedures?

"A I didn't consider it necessary to.

"Q And the answer is no then?

"A No.

"Q Did you ever speak with Mr. Roche about this judgment?

"A I can't recall any specific conversation, no.

"Q Do you recall what Mr. Roche's position was in 1966, December 31st?

"A He was president.

"Q Do you know when he became president?

"A May of 19 -- the end of May of 1965.

"Q And how long he remained president?

"A For two years."

In accordance with our prior discussion we are going to eliminate some secretarial matters.

THE COURT: Yes, please.

MR. PERSON: I'm picking up at page 43, line 21 referring now to Mr. Donner's secretary.

"Q Did she normally give you all the mail that was addressed to you?

"A I think she would unless items like complaints on cars and so on, I was not in my office all the time, but if she gave them to Mr. Belcher, he would show them to me when I came back."

MR. PERSON: Page 44, line 9:

"Q Did you have any complaints about possible lawsuits?

"A I don't recall any specifically.

"Q Do you recall whether you had any instructions with your secretary concerning communications in which suit was threatened?

"A No. She would show that to me. There were no instructions."

MR. PERSON: Page 46, line 7:

"Q Are you familiar with this Plaintiff's Exhibit 288?

"A No.

"Q Have you ever seen it before?

"A I may have seen it in connection with this suit. I have no other recollection of it.

"Q Could you indicate whether your office had received this memorandum?

"A I think it is very clear it was date stamped for me June 7th, but it's also date stamped June 9th for Mr. Roche, so that would indicate that I immediately sent it down to him for his information.

"Q And do you believe you had seen this

memorandum?

"A I may have seen it along with other memorandums. I have absolutely no independent recollection of having seen it.

"Q Are you able to determine why you forwarded it to Mr. Roche?

"A Because distribution staff was under his jurisdiction and I assumed that he would take this up with the distribution staff.

"Q Is there anything in this exhibit which is of interest to the distribution staff or would have been of interest?

"A It concerned the distribution of cars.

"Q You mean auto distributors?

"A I said the distribution of cars. I don't think we had any distributors at that time.

"Q I really wasn't referring to any wholesalers by that.

"A You used the word distributor.

"Q I was only reading the top of the ad, Auto Distributors.

"A That is not our ads, I guess, so we won't be responsible for the language.

"Q Did you have any follow up with respect to this memo?

"A I don't recall any.

"Q Do you recall whether you ever spoke with Mr. Roche concerning that?

"A I have no recollection.

"Q Were you concerned as to any anti-trust implications?

"A No.

"Q Were you then sensitive to anti-trust considerations?

"A I think reasonably."

MR. PERSON: Page 50, line 16 through 20:

"Q Were you aware at the time that you received this Plaintiff's Donner Exhibit 3 of any policies of General Motors, any distribution policies of General Motors, which could interfere with a non-franchised person selling or leasing new cars, GM cars."

Page 51, line 18:

"A We didn't have any policies that prevented that that I know of."

MR. PERSON: Page 52, line 14 through 25:

"Q If in 1966 a person bought a new car from a GM dealer and wanted to turn around and sell that new car as a new car to a retail customer --

"A You mean a retail customer bought a new car?

"Q No, a person in the business of buying new cars and turning around and selling them, who had no factory franchise from GM, do you know whether the warranty policy of General Motors would interfere with that kind of business?

"A I don't know of any interference there would be. He was in the position of any other purchaser and I know of no restrictions put on the non-franchised dealer that would have affected any purchaser."

MR. PERSON: Page 53, lines 3 to the end.

"Q Were you aware of any mileage limitations on obtaining warranty work?

"A Oh, we have had those of various amounts at various times. I don't know what the '66 one was.

"Q What was the reason for a mileage limitation?

"A As well as a term, because of the feeling that there was a point, mileage-wise, which the factory wasn't responsible for the maintenance of the car.

"In other words, cars depreciate from usage as well as from time.

"Q Were you aware of any mileage away, a radius away from a selling-dealer beyond which --

"A Now you're talking something else. I thought you meant mileage on the car."

MR. PERSON: We got into a controversy as to what I intended.

"A I don't know how I could detect that from your question.

"Q It's my fault for having asked it inartistically and I apologize.

"But, are you aware of any requirements that a retail customer return to the selling-dealer?

"A I know of no such requirements in the policy."

MR. KLEINBARD: At page 10:

"Q Did you hear of any function or party that was to be held or was held for Don Seymour during the month of December, 1966?

"A I did not know of any such party.

"Q And you never attended any such function?

"A I did not.

"Q Have you ever spoken with Mr. Roche about any such party?

"A No, sir.

"Q Did you know Mr. Hugh Morrison?

"A I have no recollection of him at all.

"Q I am sorry, the name should have been Bud Morrison. Who was I thinking of?

"A Well, the answer is the same.

"Q And as far as you can recall, you have had no conversations with Mr. Morrison, Mr. Bud Morrison about any person?

"A No, I haven't."

MR. KLEINBARD: Page 22, line 22:

"Q Do you know of any program for the enforcement of the terms of this judgment instituted by General Motors subsequent to or even before the entry of the judgment?

"A I assumed that the field personnel was advised of it, yes. That would be normal procedure."

Page 38, line 23:

"Q Was Mr. Belcher ever authorized to speak on your behalf in any matters?

"A You mean without direction?

"Q Yes. Did he have any authority.

A No, he did not."

That is all I have, your Honor.

MR. PERSON: That is all, your Honor.

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THE COURT: I take it that concludes all the depositions that you plan to read, the ones that you talked about, and I am going to ask to defer temporarily one, and that is all we are going to do this afternoon.

MR. PERSON: Yes, sir.

THE COURT: We will adjourn until 10 o'clock Monday morning.

(Jury left the courtroom.)

THE COURT: I am going to ask the lawyers to work together over the weekend, and this is obviously going to be a lot of work and take a lot of manpower, but I think it is worth it.

I think a great deal of this information has been put down in one form or another, but it seems to me it is absolutely essential to have a comprehensive schedule of what I am going to outline.

MR. PERSON: Before we even get into that, I would like to make a couple of suggestions. I think Mr. Kaplan is going to say the same thing.

MR. KAPLAN: We have been working on what I think you are about to outline for in excess of a year and the reason that it has taken so long is quite simply because the main beginnings and ends of the

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order have no meaning as to what happened to them.

THE COURT: Let me cut it short. We have come to a point about the information and it is here. If it isn't, there will be blanks, and that means a failure to prove. That is absolutely it. I don't care whether the information is available or not. It is of no concern to me, but I want either the information available or it isn't.

MR. PERSON: I have an interest in trying to offer this information. I would like to describe what it is.

THE COURT: Let us finish one thing and I think Mr. Kaplan started.

MR. KAPLAN: All I wanted to say is, I am not disagreeing with anything you say at all. It is just that we are so far down the road that to start in on a different format would put us back to Stage 1.

We have taken all of the orders in the log and all of the dealer folders and other documents and trying to find out what happened to every order. We are very near the finish of that and what I would propose is that quite simply that Mr. Person has been asked in discovery for I believe 18 months now for a list of every order that he claims didn't go through.

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That has been promised innumerable times and if he would just give us that we can either stipulate yes or no or we can find out what happened.

THE COURT: What I have in mind is a tracing of all these orders, half a dozen or so basic facts about each order, and it will reveal, it seems to me, a lot and it will prevent a lot of baseless oratory about anything.

These are the facts and when we talk about delays there won't be any room I hope for just general talk about delays, general talk about unfilled orders, general talk about anything.

This will be pinned to particulars and the particulars will lie in these schedules.

2 Secondly, it seems to me that the trend in chronological order, the trend of the receipt of orders versus filling, I am sure that will be very revealing and, finally, there has to be something which is comprehensive, complete, so that we know this is it, there is no more, there is no less, this is everything.

There is no room for anybody to say, "Oh, well, you have this Exhibit B-7 and J and F, but there a lot of other things floating somewhere."

Now, we have to have it, it is up primarily to the plaintiffs to produce it, to give this information, but it has to be done.

We are now well along in this trial and this really, if I could do this all over again, I would have asked this be done well in advance of the trial. I just didn't think out the case before the trial and I wish I had, but I can't go back to that.

MR. PERSON: May I just make a suggestion? That is that my task is to show which orders we claim had an interference either in delay or non-delivery or some other type. What I propose, because of the total impossibility of doing it in the way that you are saying --

THE COURT: It is not impossible at all.

MR. PERSON: Basically it cannot be done.

THE COURT: I think it can be done.

MR. PERSON: In the length of time to trace everything because the records don't --

THE COURT: Then there will be a lot of blanks.

MR. PERSON: Why is it I can't limit it to what my claims are? That is what I was working on, what my claims are, and not what my claims aren't.

THE COURT: Because it is out of context, completely out of context, and I have sat through this case and I know it all, I think I know the different types of arguments that are advanced here from time to time and I am saying to you that the story here doesn't lie in a lot of conversations, it lies in the transactions, and if I were a lawyer on this case I would have this material in hand if it were humanly possible to get it.

I don't know where it would lead, but I would have it in my hand and I would have this because the chronology of the basic transactions, the basic events, it will illuminate things in ways that nothing else does, it organizes things.

I am not a lawyer on the case but I am the Judge and I have a jury sitting over there and I want this case illumined and not with a lot of general talk floating here and there, but about the basic transactions.

The case has been pending for six years and has generated as much typewritten material and I say if nothing else this case can at least provide the Court and jury with a chronology of every transaction, so get to work on that, and General Motors, and we will talk about the format, but I am saying to you that I want it by Monday morning and I am entitled to it after six years of this thing, and the work that is going into this, to the basic facts instead of a lot of peripheral stuff occupying people.

So I am happy to have any reasonable format so long as it is complete, and as long as it is organized and understandable and tells the story which I am talking about.

I wouldn't know how to instruct the jury unless I had it or how to deal with motions unless I had this. It seems to me the essential facts for every transaction --

MR. PERSON: General Motors transactions?

THE COURT: Every General Motors and we won't worry about Ford or Chrysler or American Motors for the minute.

No. 1, obviously you have to have the make of the car, I think start with that.

The date the order is received by Nabcor. I am not trying to be technical about the receipt. If an order form is dated such and such, originates from some place in Pennsylvania, whether that date is used or whether the date when it is received by Nabcor, I don't know how to fathom at the moment. What I am talking about is the date of receipt, without trying for the moment to get technical about any problems.

I am assuming there were orders received by Nabcor and if they weren't received by Nabcor I am not interested in them.

So if there is a question about whether an order was received by Nabcor versus simply sitting in the broker's office, that is a question. There may be a lot of questions along here.

But to go back, we are talking about orders received by Nabcor and the date and hopefully there should be a way to pin down the date that the order was received.

Then the source of the order. I assume that in the vast majority of these orders, the order was received from a broker. But there may be a few received from individual customers.

The next, the date of the order which I have covered and the source of the order and in most cases it would be the name of a broker, and it doesn't have to be repeated, but, of course, we would like to know the location of the brokers.

Now, the next stage is what Nabcor did with the order, and if it did nothing, it is going to be a blank from then on. But if it gave it to a dealer, the name of the dealer to whom the order was given, and I am referring to the franchised GM dealer.

The date when the order was given to that dealer.

What happened then I assume in the great majority of the cases, the order was filled, so the next step would be the date when the order was filled.

Here, I don't know, I haven't gone over these charts that have been made up, but if there is some problem that causes us to break down these dates into some kind of distinctions, maybe so.

I am thinking in general terms of the date when the order is filled, but maybe you have to talk about the date when the car is delivered to Nabcor or the invoice date.

But I don't think we have to get that fine, I think -- I would assume that the crucial thing on orders that are filled is the date when the car is delivered to Nabcor or to whoever Nabcor designates.

Going back to this general question of what ha-pens after an order is given to a dealer, there may be other events that occur besides the simple filling of an order in the normal course.

The order may have been cancelled by Narcor; the order may have been cancelled by the dealer; the order may have been cancelled in one way or another and then placed again with another dealer.

So basically what we are trying to do is to find out the essential facts of what happened. If the order was not filled in a simple one-short transaction. How to set that up and tell that in the simplest form is really up to you. I think those would be the rare cases and I don't know how to set it up.

3 Now, if I had those facts and nothing else, presumably from that you could tell the orders that were filled and the orders which weren't filled and you would know how often this happened -- if it was all bunched or occurred spasmodically over a period of three or four years -- you would presumably get an idea of the basic problems of delay or promptness, that kind of thing.

In addition, there is some other information which has been referred to in some of these tabulations and some of the evidence, and that is the price, although I don't think the price is all that important.

But if information about price is there

and can be put down, I guess it ought to be.

Another thing which appears in some of these exhibits, and I have B-7 before me and I think this is important, is whether Nabcor's name was given to General Motors, either in the order submitted by the dealer or in applying for the fleet rebate or in some other way.

That may get to be very difficult and if it is, I think that information is secondary, but I do have in mind particularly on B-7 the information was given and it certainly has some significance, and I think you ought to consider that question.

Another question is whether a fleet rebate was applied for, granted, refused or what.

MR. PERSON: That is minimal, your Hono .

THE COURT: I am sure it is. There are certain of these questions that I think are of secondary importance, but the basic thing is what orders were received by Nabcor, the source of the order, the date of the order and what was done with those orders by Nabcor vis-a-vis the dealer and the results.

There is no more important group of information or group of facts in this litigation.

It is not just a matter of Mr. Person finding

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out what orders were not filled, that would be meaningless. It is the context and the context, I think, is the schedule.

Where do you stand, Mr. Kaplan, and what is it that you are working on?

MR. KAPLAN: We are working on a number of things. We are working, first of all, on a tabulation of orders placed by each of the 100-odd Nabcor brokers and what happened to those. That should be ready in very short order.

THE COURT: What do you mean by what happened? What kind of information specifically?

MR. KAPLAN: We will produce in essence a sheet for everyone of the Nabcor brokers listing chronologically every order he submitted if he submitted any, and whether he got them or not.

THE COURT: In other words, most of them would go to Nabcor but some did go to Turco?

MR. KAPLAN: Almost everything went to Nabcor.

THE COURT: That would be the basic information about orders and what happened to each broker.

MR. KAPLAN: Basically tabulated by broker.

We are also in the process of tabulating all of the information your Honor listed except the stuff about the fleet rebates and that sort of thing, which is scattered, by make of car, chronologically within make and also by dealer.

THE COURT: What information specifically are you trying to get. We have -- do you know the total list of variables? It is twice the list of things you listed. Make and model of car, date order received by Nabcor, source order came from. It has whether Nabcor's order date or the dealer order date, and the date the car was shipped by factory to dealer, and it has the date the dealer invoiced to Nabcor, and where it has the Nabcor price to the broker and the broker price to the customer, the GM price to the dealer, all of the markups,whatever data is available, and by no means is available universally. Also a number of other things that I just dont remember.

I feel that we are going to be able -- I don't know whether by Monday, but certainly have it available in a short period of time, and we have taken every single line of Plaintiffs' Exhibit 450, the order log, which in itself doe snot always reflect the disposition of the order, and we will be able to tell what happened to that order.

THE COURT: All right.

MR. KAPLAN: That information was the basis of the cross the other day. There is quite clearly an inference from your comments, a pattern of Nabcor going from Dealer A to B to C, and with a few exceptions being able to get what they wanted for a whole line of cars. We have compiled that information and it is just a question of getting it all put together.

THE COURT: I will tell you, I think time now is of the essence and if there is anything that can be done to strip it down -- I don't know what you feel you need for your case or Mr. Person feels he needs for his case. I have in mind what I feel I need to understand the case from my standpoint, but I am not the last word, and there will be appeals and the jury and so I am not trying to limit you.

But I do think that there ought to be a way to bring this project to a close and I was serious about Monday, because I think the sooner we get this, the sooner we can really determine a number of things.

There is going to be a controversy over how much additional proof will be put on by the plaintiffs, and that means by way of expert testimony and so forth. These things in my view are most helpful to assist that kind of thinking.

MR. KAPLAN: I fully understand, your Honor.

THE COURT: So it is important to draw it to a close even if it has to be simplified to some extent.

MR. KAPLAN: Your Honor, I think we will be able to give you all or almost all of this within the next day or two, business day or two. It certainly includes everything you talked about. I understand the problem and it is in our interest, so we will make every effort.

MR. PERSON: I can't really agree with his understanding of the problem. I think that is is really in plaintiffs' interest and I don't have the resources which they have to put into this over the years, and really if I could focus on what we claim are the problems from our standpoint and let him produce what he claims is in his interest, maybe the two of us combined can do something.

I need to concentrate on what the problem orders were and it is time-consuming to try to work this thing out.

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THE COURT: Mr. Person, I have no doubt about that, but I mean what I say is this thing has got to be put in context.

MR. PERSON: They are producing the context.

THE COURT: Your position is sensible in the fact that you are the plaintiff, but it is up to you what you think makes your case, and they come up with what they think will make their defense, and that is fair enough.

But I don't care who does it, I am just saying from my standpoint the whole array of facts is necessary and I don't think I need say anything more about it. It is really being done.

Let me ask another thing. I think it was helpful in the cross-examination of Anthony Maiorana to go through the Buick and Chevrolets.

4 **MR. PERSON:** I will comment on one thing and that is that they should have asked Frank Maiorana on that. I don't think Anthony's knowledge is as good and what they did is particularly good for them, but that is not the way it works.

THE COURT: The facts in the long run are going to be these tabulations.

MR. PERSON: They should be, your Honor.

THE COURT: I am wondering, and this may be Gargantuan, but I really thought that if you could have two things, do it by make and then total some way -- I am sure this is out of the question, but let me dream for a minute.

In these days and age with computers and all you can put stuff in and practically spit it out in any form. If you want it organized by all the information about the Buicks, the machine can spit it out in 30 minutes and you have it all written up about Buicks and then you can have it written up about Oldsmobiles, seven columns.

Then you can press a button and say, do it all chronologically for all makes, and the thing spits out seven columns for the whole thing. I suppose that we are far from that.

MR. KAPLAN: I am told that it is on my desk, as a matter of fact, your Honor.

THE COURT: The thing is, I think there is a story depending on the car for each make and also a story all-told. I don't know what is possible.

MR. PERSON: Could they provide the variable for the fleet allotment and the retail allotment?

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Could they do it just for gratis?

THE COURT: When you say the fleet allotment, what do you mean?

MR. PERSON: I mean the manner in which the order was built by the factory. According to the previous factory orders when they are built a portion of production is set aside as a fleet allotment and they set aside a portion of production and give priority to building for those fleet orders, that quantity.

THE COURT: I have to say what difference does it make?

MR. PERSON: Timewise.

THE COURT: We will see the time.

MR. PERSON: We won't, if they don't know what the order is.

THE COURT: If we know Nabcor placed an order with a GM dealer on September 1 and got that car by September 15 --

MR. PERSON: It wouldn't make much difference.

THE COURT: If you come along and say there was delay, it was disadvantageous to us, - whatever time, I am not trying to use two weeks, whatever period of time.

MR. PERSON: 120 days.

THE COURT: Suppose we find out the order was placed on September 1 and not filled until 120 days later.

If you come along and say, that was a problem to us, we lost our customer, or we were having our brokers say that they couldn't tolerate this kind of delay or whatever, at least what I am getting at is we know the instances of delay and then there may be problems which can be argued about or testified about or something.

But right now, you see, we really don't have any form that this is really pulled together. There is a lot of information and a lot of it is very helpful but we don't know much but just the bare facts of what the delay was.

So I would say let's get those bare facts and then let's see what the problems are and I am sure there are instances that are subjects of controversy.

I think for the time being the whole allotment thing is -- it depends so much on the circumstances, whether the allotment is even anything more than academic depends, I guess, on whether there was any problem getting cars. So the real thing is did they get the cars.

What is your prognosis of when we can have this material? I promised it to the jury on Monday and I know I was unauthorized to make that promise.

MR. KAPLAN: It will be another couple of business days, but certainly I think next week.

THE COURT: Are you being overly elaborate?

MR. KAPLAN: No.

THE COURT: Suppose you just got the things I am talking about, could you do it faster?

MR. KAPLAN: Absolutely not, that has no bearing on it at all.

THE COURT: You have the information, and you just write it out for a few more columns?

MR. KAPLAN: That is right. The basic data is all there already and it is just a question of resorting and manipulating it, perhaps a matter of a couple of days.

THE COURT: How about this weekend?

MR. KAPLAN: First of all, the computer is in Detroit and there is material in transit between here and Detroit, and there are some problems.

Some of it has to be recast, it is not responsive to the order log necessarily. It is a matter of a short time, I can assure you.

THE COURT: What are we doing Monday? Can you have it by Wednesday?

MR. KAPLAN: I certainly hope and have every expectation.

THE COURT: Really, to me the thought of going without this for a week is --

MR. KAPLAN: We agree.

THE COURT: What about Monday and Tuesday witnesses, do you have those from Buffalo?

MR. PERSON: Yes.

MR. KAPLAN: Could we know in order the next witnesses Monday through Wednesday?

The reason I ask among others is about 9 o'clock last night I was told Snyder was going to be here in the morning and I spent half the night getting ready for the cross and he is not here and the time could have been used for another purpose and I don't want that to happen again.

MR. PERSON: I have Monday, your Honor, but I do not have the following days. I am really trying to keep things moving and it is a voluminous job and you can be sure that --

THE COURT: Who are they going to put on first

Monday?

MR. PERSON: Don Bolling and Dale Strimple and we have a Richard Arnold deposition and a franchisee Meisnere.

THE COURT: Who is Richard Arnold?

MR. PERSON: Formerly employed by Bob Bain, Chevrolet in Buffalo.

THE COURT: How long is the deposition?

MR. PERSON: I doubt if it would take more than 45 minutes or so.

THE COURT: You have Bolling and Strimple and the Arnold deposition.

MR. STRIMPLE: They are live, just the Arnold deposition.

We have the franchisee of Nabcor, Msisnere.

THE COURT: His deposition will be read?

MR. PERSON: He will come here in person from Washington.

THE COURT: Monday?

MR. PERSON: Yes, your Honor.

THE COURT: A total of three live witnesses and a deposition for Monday. What about Tuesday?

MR. PERSON: Your Honor, I haven't worked it out yet. I will communicate with him.

MR. KAPLAN: Can we know when Mr. Nash is going to testify, if at all, because his depositions are quite lengthy.

MR. PERSON: I think it depends on whether we need him in connection with damages in terms of analyzing some of these transactions. I don't have him as a liability witness right now. I don't have any basis for calling him in terms of liability, but we may need him in connection with explaining these transactions. And Jack Snyder is in the same position essentially.

MR. KAPLAN: Could I inquire as to the basis for calling Meisnere Monday, because he was not on any witness list previously?

MR. PERSON: I only said in my pre-trial brief these were the liability witnesses. His purpose now would be to show what happened to the Nabcor franchisee in connection with why he went out of business.

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MR. KAPLAN: Your Honor, I kind of suspected that was the basis and that raises some problems. We have taken the position that you can't possibly prove what happened to 250 brokers by calling four of them. I just question the utility of starting the effort.

MR. PERSON: I would agree we should have it by inference, to tell you the truth, your Honor.

THE COURT: By what inference?

MR. PERSON: An inference from the information that we supplied that the records of the company should give rise to inferences as to what happened rather than try to provide it from any statistical number of brokers.

THE COURT: You do have some plaintiffs here and is the man's name Meisnere?

MR. PERSON: Yes.

THE COURT: He operates a franchise where?

MR. PERSON: I believe Washington, D.C. area.

THE COURT: What is he going to testify to?

MR. PERSON: He couldn't get cars and went out of business for that reason.

THE COURT: Where did he attempt to get cars?

MR. PERSON: From Nabcor.

THE COURT: How many orders did he place?

MR. PERSON: I think 12.

THE COURT: How many did he get?

MR. PERSON: I believe, and I have been over quite a few things, I would say about three, your Honor.

THE COURT: That he got?

MR. PERSON: He could not get about three out of 12, approximately. I don't want to be held to that.

THE COURT: The thing is at this point we are talking about restricting witnesses and we have a lot of problems.

No. 1, there undoubtedly was a witness list submitted and this and that. I don't want to try to spend any more time on that kind of problem than I have to.

As far as just a question of relevance, if Mr. Person wants to put on brokers to show the effect upon them of the alleged illegal activity, I couldn't say it is irrelevant, and I couldn't say that he shouldn't be permitted to put on a sampling if he wants to show it, and it is up to the Court and the lawyers and the jury to realize and to sensibly deal with what inferences can be drawn from that sample.

We have the situation of the plaintiffs here, but I don't know why, subject to the past records about limiting the witness list and all, I don't know why the plaintiffs are restricted to presenting the plaintiffs as examples of what happened to brokers from the alleged illegal activity, so I am a little at a loss without getting into this --

MR. KLEINBARD: Your Honor, what I would suggest is this, if we may.

By Wednesday, hopefully, and possibly before, but certainly by Wednesday, you will have the analysis from us, and I don't know when you will have the analysis from Mr. Person, but I know he is doing it as fast as he can.

It would seem to me we ought to take the testimony of all the plaintiffs before we get into the brokers, because when you get this chart you will be in a much better position to tell whether a particular franchisee is typical or not. Just taking the occasional franchisee is meaningless unless it is going to lead somewhere.

There will be no inferences that could be drawn from one particular franchisee. We had no opportunity to depose them and we will be going through the same process we did with the dealers, in effect, deposing them in the presence of the jury.

The plaintiffs I believe have all been deposed, so if their testimony goes in, there will be no difficulty. I will call each of the four remaining franchisee plaintiffs.

THE COURT: Why don't you start with them. I would suggest to make use of our time, and these are people as to which there has been discovery?

MR. KLEINBARD: That is right.

THE COURT: We are not groping. I suggest that it would be very productive use of the first couple of days next week to have Mr. Bolling and Mr. Strimple and others of these dealer plaintiffs,unless you are simply not going to call them. That is up to you.

MR. PERSON: I intend to establish the extent of their damages and what happened.

THE COURT: Regardless of what the charts show, these are plaintiffs and if you are going to call them to testify, why, then you should do that, and I think that just following along after Strimple and Bolling --

MR. KLEINBARD: Can we inquire whether that is going to be alive or by deposition?

MR. PERSON: Alive, with respect to each of the remaining franchise plaintiffs.

THE COURT: Have you communicated with them or lined them up at least tentatively for coming in here?

MR. PERSON: They all know that.

THE COURT: Who are you calling, Bolling and rp

Strimple --

MR. PERSON: Bolling is not a plaintiff.

THE COURT: I understand, but who are you calling?

MR. PERSON: He has an interest, but there is no agreement of any kind. Strimple, Turco and Young and the estate of Jamele. I am not so sure that the administrator by transcript to some extent is still in the case.

THE COURT: There is no use in having the administrator come in. Was Jamele's deposition taken?

MR. PERSON: Partially, the deposition was taken, yes, just some information which we will offer. So it is three live franchised plaintiffs and one transcript.

THE COURT: That is not going to take two days.

MR. PERSON: Plus the Arnold deposition and Meisnere.

THE COURT: You told him to come on Monday?

MR. PERSON: Yes.

Snyder and Nash could serve all interests if we got some information to work with. I think it is probably better --

THE COURT: In other words, right now, let's pin this down, you are going to call as live witnesses Monday and Tuesday Bolling, Strimple, Turco, Young, Meisner.

You are going to read the depositions of Arnold and Jim Meli.

Do I have a full memory of that?

MR. PERSON: Yes, your Honor.

THE COURT: What you are saying is, as far as Nash and Snyder, you want to defer that until the statistical material is ready.

MR. PERSON: Co-rect. It may be an advantage or disadvantage.

THE COURT: Have we gone as far as we need to this afternoon?

Thanks a lot.

(Adjourned to Monday November 15, 1976.)

THE COURT: You talked to Mr. Nash there?

THE WITNESS: Yes.

Q Could you state what he said about the Nabcor system, please?

A Basically, he said that we could offer a service to the public whereby we would be able to sell cars at a discounted rate and enter into the automobile business as a broker.

Q Was there any mention about the competition from franchised dealers?

A Not that I can remember.

Q Had you ever heard of any automobile brokerage company before that time?

A No, I had not.

Q There came a time at which you acquired a franchise?

A Yes.

Q When was that?

A Within a few weeks from the initial meeting. I don't remember the exact date.

Q Did you make any promises to pay anything for the franchise?

A Yes.

Q How much had you agreed to pay?

A $5000.

Q How much in fact did you pay?

A $5000.

Q Was that in cash?

Q It was in cashier's check, two installments I believe of $2500 each.

Q Did this franchise give you any territory in which you would act as a broker?

A Not as a broker. I don't remember any outlining of territory.

Q Did the franchise permit you to sell other franchises?

A No, it did not.

Q Do you recall any of the obligations of Nabcor in connection with that franchise, obligations to the franchisee?

A Yes.

MR. KAPLAN: At this point I object. There is a document and the document speaks for itself.

THE COURT: Why don't we have the agreement, yes?

MR. PERSON: Is there any objection to this?

MR. KAPLAN: I have no objection to 687.

THE COURT: It will be marked.

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(Plaintiffs' Exhibit 687 was received in evidence)

THE COURT: I note that this has no date on it.

(Pause)

MR. KAPLAN: Your Honor, we will stipulate that this was signed between July 11 and July 25, 1967.

(Mr. Person read to the jury from Plaintiffs' Exhibit 687 in evidence)

(Mr. Kaplan read to the jury from Plaintiffs' Exhibit 687 in evidence)

Q Did you actually commence operations as a Nabcor franchisee?

A Yes.

Q About what time in relation to the signing of this agreement?

A I would say almost immediately.

Q Did you set up a place of business?

A Yes, I did.

Q Where was that?

A West Seneca, New York; Union Road.

Q How far is that from the main part of Buffalo, just to assist us?

A Eight to ten miles.

Q Could you describe the facilities? Were they rented?

A Yes.

Q Describe them.

A I entered into a year's lease with an option to renew. This was approximately 750 square feet. It was a small plaza type setup. I believe there was a music store and barbershop in the same plaza.

Q Was there any showroom for automobiles?

A None.

Q Was there any service area for automobiles?

A None whatsoever.

Q A place for parts or inventory relating to automobiles?

A No.

THE COURT: This is a group of shops?

THE WITNESS: Yes.

THE COURT: There was a music store?

THE WITNESS: I believe there was a music store on the south side of me and a barbershop on the north. We were in between.

THE COURT: This was a ground floor space?

THE WITNESS: Yes.

THE COURT: A series of one-story shops?

THE WITNESS: Yes.

Q Did you have the identification, the name of your company, in the window?

A Yes.

Q What was the name of the company?

A Multi-Make Auto Sales & Leasing.

Q What type of legal entity was that, if you are familiar with legal entities? Was it a corporation?

A No. It was not.

Q Was it you doing business under that name?

A That's right.

Q Not incorporated?

A That's right.

Q Do you recall how much per month you paid for rent?

A I believe it was $175 a month plus utilities.

Q Did you at any time attempt to generate sales of any kind for your company?

A Yes.

Q When was that in relation to opening up this office?

A Almost immediately.

Q Describe what you did to generate sales?

A I had a professional artist come in and paint the window with the name of the company, the relative format of all my advertising: All makes and models available.

I ran several ads in the local papers -- they were like the tabloid type paper that comes out in the specific areas.

Q Did you use any signs supplied by Nabcor?

A Yes.

Q Was that the sign that was referred to in this franchise agreement, 687?

A Yes.

Q Did you have any capital to begin operations with over and above the cost of your franchise?

A Yes.

Q State approximately how much you commenced business with.

A I believe it was $3000.

THE COURT: Over and above what you paid for it?

THE WITNESS: Yes.

THE COURT: What you paid for the franchise?

THE WITNESS: Yes.

Q You were attempting to generate sales. What type of sales were you trying to generate?

A New cars retail sales.

Q Were you attempting to sell franchises?

A No, I was not.

Q Were there any other activities that you engaged in in order to attempt to generate sales orders for new cars?

A None other than the advertising campaign that I launched.

Q Did you obtain any orders for new cars?

A Yes, we did.

Q Could you state how many orders you obtained during your first month of doing business, approximately?

A I would say eight to ten.

Q What did you do with those orders?

A Placed them with Nabcor in Philadelphia.

Q Were you able to obtain all of these ordered automobiles without any difficulties?

A No, sir.

MR. KAPLAN: I object to the form.

THE COURT: Sustained.

Q Did you obtain all of these ordered automobiles?

A No, I did not.

Q Do you recall how many of these ordered automobiles you obtained?

A None.

Q Did you do anything at that time to attempt to obtain a source of supply of automobiles?

A No, we did not.

Q When approximately was this? Are you speaking beyond your period as a --

A I am referring to when I was Mutlti-Make Auto Sales.

THE COURT: Are we going to learn whether these are General Motors cars or Fords or Chryslers?

Q Can you recall what the makes of cars were ordered?

A A combination of Chevrolets, Oldsmobiles, Cadillacs. I believe that's all.

Q Any Ford products?

A No.

THE COURT: In other words, it was a combination of Cadillacs, Chevrolets, Oldsmobiles, and Pontiacs, didyou say?

THE WITNESS: That's right.

THE COURT: No Chryslers?

THE WITNESS: No.

THE COURT: No Fords?

THE WITNESS: No, sir.

THE COURT: No American Motors cars?

THE WITNESS: No, sir.

Q Subsequently did you enter into an agreement with respect to another Nabcor franchise?

A Yes, sir, I did.

Q Do you recall approximately when that was?

A I would say in August of '67.

Q We have Defendants' Exhibit Z4 in evidence. It's a master area distributor agreement dated October 6, 1967, among Donald Bolling, Dale Strimple and Gary Kuhaneck.

Take a quick look at this, please.

(Pause)

Q Is this an agreement you entered into with Dale Strimple, Gary Kuhaneck and yourself?

A Yes, sir, it is.

THE COURT: Does that have a number?

MR. PERSON: It's in evidence. Defendants' Exhibit Z6.

THE COURT: May I see it, please?

MR. PERSON: Surely.

(Pause)

Q Could you describe what the nature of your arrangement or agreement was with Dale Strimple, Gary Kuhaneck and yourself which resulted in this agreement?

MR. KAPLAN: I thought this was the agreement.

Q What was the purpose in entering into this?

A Dale Strimple became a contact with me because of the advertising program I had going. We had numerous meetings in which we discussed combining our two brokerages and obtaining a Nabcor distributorship for the purpose of one, selling franchises which would be added income to our operation and also being able to set up our own source of supply for the automobiles which we were having difficulty getting.

Q Did you actually go into business with Dale Strimple and Gary Kuhaneck at or around the date of this agreement, October 6, as far as you can recall, 1967?

A Yes.

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Q Did these negotiations for this distributorship agreement, which is the correct title is Master Area Distributor Agreement, did these negotiations involve Nabcor at all?

A Do you mean the preliminary negotiations?

B At any time was Nabcor involved in this new franchise agreement of October 6, 1967?

A Yes, they were.

Q What were the monetary arrangements made in connection with the signing of this October 6th agreement?

A If my memory serves me correctly, we paid in addition to what we already invested into our brokerages, a total of $12,500, with a note for $10,000, I believe.

Q Do you recall how much cash you paid, if any?

A I think I had a total of $8000, 8500 invested.

Q That includes your original payment for the franchise?

A Yes.

Q The earlier franchise?

A Right.

Company, the plaintiff in this action?

A Yes, we did, both in the automotive and the franchise end of the program.

Q Could you state what activities you engaged in at that time in order to attempt to generate orders for new cars?

A Well, a similar operation, we advertised in the local papers, proceeded to set up areas into which we were going to be selling our franchises and advertising in those areas.

Q Did you advertise for cars in those areas or advertise franchises in those areas?

A Generally in the outlying areas from where our dealership was located we advertised for franchises.

Q Going back to the generating of automobile orders, were you able to generate any automobile orders?

A Not at that time, no.

Q Did you have any orders which you brought to the combined businesses?

A Yes, I did.

Q About how many?

A Seven.

Q What happened to the other orders that you had generated?

A We had to cancel the majority of the orders and return any deposits if they were paid because of being unable to deliver the automobiles in a relative period of time.

Q Can you recall approximately how many cancellations you had of orders that you had obtained in Multi-Make?

A 18 or 20.

MR. KAPLAN: I object and move to strike that answer on the ground there are records of these transactions in Plaintiffs' 450 and the records don't bear much resemblance to the testimony and the records are the best evidence.

Among other things, he said he brought over seven, but he cancelled 18 or 20.

THE COURT: He didn't say that.

Mr. Person, I couldn't agree more strongly where there are records we should depend on these records.

MR. PERSON: We don't have the records. We only had interrogatories.

THE COURT: What do you mean? There is this 450, which supposed to be a record of orders received from Nabcor.

MR. PERSON: Up in Buffalo they would not turn their orders in to Nabcor.

THE COURT: Wait a minute.

EXAMINATION

BY THE COURT:

Q You say the original orders that you obtained, you said were right to ten original Multi-Make orders that you got, the first ones. Those were given to Nabcor?

A Yes.

Q Did Multi-Make then obtain additional orders beyond the right to ten?

A Yes, we did.

Q What is the total number of orders that Multi-Make obtained?

A I would say 25.

Q Did you turn those in to Nabcor for Nabcor to fill?

A No, sir, not all of the orders we did not turn in.

Q How many did you turn in to Nabcor?

A I would say the original eight or ten that we transferred over to General Auto Sales.

Q You are saying the original eight to ten were given to Nabcor?

A The first orders that we took, when I opened up Multi-Make I placed with Nabcor and brought over to General Auto Sales & Leasing.

Q What about the other 15 to 17 orders?

A Those orders were held in lieu of obtaining the distributorship and using the orders to set up our local supplies.

Q What do you mean by held in lieu of?

A We kept orders back without placing them with Nabcor to be able to place with local dealers in our local areas.

Q Did youactually place those orders, did Multi-Make go to dealers and order those cars or attempt to order those cars?

A Only the first seven. The reason for that --

Q Just a minute. When you say the first seven, you are talking about the first seven out of the first eight to ten?

A Yes, sir.

Q Let's put those aside for a minute.

I want to ask you about the additional 15 to

17 cars which would be the difference between the total of 25 you gave me and the eight to ten original orders.

So out of the 15 to 17 orders that you say Multi-Make obtained, did Multi-Make go to dealers and try to get those cars?

A No, sir.

THE COURT: All right, Mr. Person.

BY MR. PERSON:

Q Was it that you had additional orders that were not placed with any dealer that you had in your negotiations and agreement with Dale Strimple, is that correct?

A Correct.

THE COURT: Let me hear that last question and answer.

(Record read.)

Q Do you recall what the arrangements were with Nabcor as to what portion of the brokerage commission that Multi-Make would keep?

MR. KAPLAN: Objection, I think that is in the contract, E-6.

THE COURT: Isn't it in the contract?

MR. KAPLAN: I think it is Paragraph 17.

Q When you were in this combined company called

BY THE COURT:

Q You said you took about seven. Were there eight car orders over from Multi-Make to General?

A Yes, sir, there was.

Q Then you talked about an additional 15 to 17. Were those carried over to General?

A No, sir, these orders were cancelled. The ones that I referred to earlier that were cancelled because of us being unable to deliver the automobiles.

Q But you said a minute ago you made no attempt to get any of these 15 to 17 from any dealers nor did you give them to Nabcor?

A No, we did not. The time transition from when the orders were taken and we actually started procuring or whatever you want to call it, setting up ehe suppliers in our local area, made it almost impossible to deliver the cars on time and people got tired of waiting and cancelled.

Q Do I understand in answer to the 15 to 17 did you say you did not ask Nabcor to get them?

A That's right.

Q Nor did you request any dealer to fill them?

A No, we did not.

Q And your customers cancelled?

A Right.

Q That leaves us with the original eight to ten and you speak of seven. How did the eight to ten get down to seven?

A He asked how many cars were sold in the first month, and that is where that came in.

Q And you gave those to Nabcor to fill?

A Right.

Q Nabcor didn't fill any of them?

A No.

Q Now, what was the status of those eight to ten when you went with General?

A They were still active orders, we were still attempting to fill the orders through local suppliers.

Q You stated you had additional orders for cars. Can you state approximately how many additional orders you obtained through the end of 1967, if you can recall?

A I can recall. I don't know the exact number of orders.

Q Can you approximate the number?

A Between four and five orders.

Q Did you attempt to obtain local sources of supply for autmobiles in the Buffalo area?

A Yes.

Q What types of automobiles did you try to obtain?

A At the beginning mainly General Motors products because that's what we had the orders for.

Q You are aware of the five different makes of cars that General Motors has?

A Yes.

Q Did you attempt to find a local supplier for each of the five makes?

A Yes.

Q Can you name some of the Chevrolet dealers that you sought to obtain supplies from?

A Kem-Dengler Chevrolet.

You are asking for the ones I was personally involved in?

Q Yes.

A Dengler Chevrolet.

THE COURT: Is that the same as Kem?

THE WITNESS: No. Kem Dengler Chevrolet is in Westfield, New York and Dengler Chevrolet is in Fredonia, New York.

Q Can you tell of any others offhand?

A No.

Q Did you attempt to obtain sources for Cadillacs?

A I did not personally, no.

Q Buick?

A Yes. That was with Paul Batt Buick, Lancaster.

Q Oldsmobile?

A That was also Kem-Dengler. He was a combined dealer.

Q And Pontiac?

A No.

Q Were you able to get any sources of supply yourself in Buffalo through the year 1967?

A No.

Q Do you know if anyone else in your company, General Auto Sales & Leasing, was able to obtain --

MR. KAPLAN: Objection. I move to strike.

THE COURT: If they were in a partnership one knows what was going on.

Was your company able to get sources of supply of any of these cars through the end of 1967?

THE WITNESS: No, sir.

THE COURT: Next question.

Q Could you describe the facilities after you went into that organization, General?

A It was at one time a new car automobile dealership. It had a showroom, upstairs and downstairs offices.

THE COURT: Was it also a new car franchise dealer?

THE WITNESS: Not at this time, no.

THE COURT: But it had a showroom. What else?

THE WITNESS: Upstairs and downstairs offices, service department, body shop.

THE COURT: It had a service department and body shop going?

not General Motors.

MR. PERSON: I object to that. I think there is some material there --

THE COURT: I'll indicate that.

(In open court)

THE COURT: The evidence about Paul Batt Buick, which I think is about to come in, this is received on the same basis as evidence that I discussed with you at the very beginning of the trial. Paul Batt Buick is a defendant. Paul Batt Buick is represented here by a lawyer this morning, Mr. Runfola, who was introduced to you.

The evidence as to Paul Batt Buick is received against Paul Batt Buick but it cannot be considered against General Motors unless there is a logical connection of that evidence with General Motors, and that's something for you to determine. Batt Buick is an independent franchised dealer as far as I know.

You may continue.

Q Did General have an order for an automobile from Paul Batt Buick during 1967?

A Yes. It was an Electra 225.

Q Do you recall when that order was placed?

A No, I do not.

Q Did there come a time in which you went to the premises of Paul Batt Buick to inspect an Electra?

A Yes.

Q Will you describe this Electra?

A As far as color and equipment?

Q Do you know what specifications are for an automobile?

A Yes.

Q Was an automobile ordered from Paul Batt Buick according to specifications set up by General?

A Yes.

Q Did general have a copy of those specifications?

A Yes.

Q Did you inspect a Buick --

MR. RUNFOLA: May I have a question on voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. RUNFOLA:

Q Did you have anything to do personally with the ordering of that Buick?

A No.

Q Yo had no personal knowledge as to anything concerning this order for the specifications at the time the order was made?

A Other than the signed order from the customer that was in our possession --

Q Did you have that signed order in your possession after the order was made?

A Yes.

THE COURT: You may proceed, Mr. Person.

BY MR. PERSON:

Q Did you have a copy of the specifications available to you when you inspected a Buick on the premises of Paul Batt Buick?

A Yes.

Q Describe what you did at that time?

A We matched the standard and optional equipment that was ordered with the equipment listed on the manufacturer's sticker on the window of the car and it agreed, and we then went ahead with our proceedings to purchase the car and deliver it to our customer.

Q Who is "we"?

A Mr. Strimple and myself.

Q Could you state what you did, the two of you?

A We inspected the car and we were told that the car was going to be made ready, so to speak, or cleaned up, ready for delivery.

Q Had you satisfied yourself that the car you inspected was the one described on your list of specifications?

A Yes.

Q Was there any indication on the car as to the person for whom the car had been ordered?

MR. KAPLAN: At this point I object to the leading, your Honor.

THE COURT: Overruled.

A Not at this time.

Q What did you do after you inspected the car?

A We were told the car would be made ready and we could deliver the car the following day to our customer.

Q Who told you that?

A I don't remember the gentleman's name. I believe he waa the general manager or the sales manager at the time.

Q Was he there during any portion of your inspection?

A Yes.

Q After the inspection what did you do?

A We went back to our office. The car was taken back to the get-ready department and a notice put on the windshield, "General Auto Sales & Leasing."

Q How do you know that?

A I saw it.

Q When was this?

A At the time the car was taken back into the service department.

Q When did that occur?

A Immediately after we inspected the car.

Q Could you describe what it was that you saw?

A It was a piece of paper written "Sold to General Auto Sales & Leasing."

Q Where was that paper?

A Underneath the windshield wiper on the windshield.

Q That was on the first day?

A Yes.

Q After that what did you do?

A Went back to our office.

Q What were your next activities in connection with this car?

A The following day we attempted to purchase the car and deliver it to our customer, make arrangements to purchase it and get it delivered.

Q Did you go anywhere that day?

THE COURT: Did you go back to Paul Batt?

THE WITNESS: Yes.

THE COURT: Who went back?

THE WITNESS: Mr. Strimple and myself.

THE COURT: What happened?

THE WITNESS: The car was not there. We were told we could not have the car. The factory had recalled it.

Q Who told you that?

A The general manager.

Q Was Mr. Strimple with you at the time you were told that?

A Yes.

Q What did you do at that time?

A There was not much to do at that time. We went back to the office and discussed it.

I believe Mr. Strimple personally called Paul Batt and talked to him about it.

Q We'll let him talk about that.

Did you have anything further to do with that automobile?

A No.

Q Do you know if a similar automobile was ever ordered by General?

A I do not know that to be true.

Q Do you know a Mr. Robert English?

A Yes, I do.

MR. KAPLAN: May we see you at the side bar again?

THE COURT: Yes.

(At the bench)

MR. KAPLAN: I had hoped to do this out of the presence of the jury before court. This didn't work.

We objtct to the conversation with English, any testimony about any statements made by English on the ground they're hearsay in that there is no showing that English was acting within the scope ofhis employment or authorized to make the estimates alleged.

We also prepared a memorandum on this subject which contains a summary of the relevant testimony from the preliminary hearing and the docunents relating to English's authority, and I would hand it up to your Honor at this point. It's been served on Mr. Person and the original will be filed.

We did try to see you this morning.

THE COURT: See me this morning? This is something new?

MR. KAPLAN: We made this objection at the preliminary hearing as well, your Honor.

I can summarize it in two seconds. The summary is this:

The plaintiffs have the burden of showing either that English was authorized to make these alleged threats to Gillogly Chevrolet or that making statements on that subject matter was within the scope of his employment as a district manager of General Motors.

The plaintiffs have never attempted to make any showing and the evidence at the preliminary hearing shows, first of all, that as a district manager he was not authorized to make such statements and had no authority to control the number of cars they got; and, furthermore, that General Motors in August of '66 sent specific instructions both to Chevrolet dealers and to Chevrolet personnel --

THE COURT: I think we have to take a recess.

(In open court)

(Jury out)

THE COURT: Go ahead, Mr. Kaplan.

MR. KAPLAN: As I was saying, your Honor, the plaintiffs have the burden of proving as to Mr. English either that the statements he allegedly made were within the scope of his employment as a general manager for General Motors or alternatively that he was authorized to make the statements. Neither at the preliminary hearing or at the trial has the plaintiff attempted to do that.

Furthermore, the evidence at the preliminary hearing which your Honor is entitled to consider are under Rule 104 of the Federal Rules of Evidence shows, first of all, that a district manager such as Mr. English had no authority to do any of the things that English, according to this witness, threatened.

For example, at pages 716 and 717 of the transcript, in a passage quoted at page 7 of the memorandum I have just handed your Honor, English testified thathe had no authority to determine how many automobiles Chevrolet dealers got each month.

Going beyond that, and I think more important, is the fact that in August of 1966, after the entry of the judgment in United States against General Motors, about which we have hears so much here, General Motors sent explicit instructions both to the Chevrolet field personnel including Mr. English who signed for a copy of the instructions and to all Chevrolet dealers instructing both the dealers and the Chevrolet personnel that no Chevrolet employees had authority to discuss sales to discount houses or other resellers, and they were not to discuss those matters; and, indeed, General Motors sought to enlist the cooperation of the dealers in making certain that no such discussions took place.

I would submit quite simply, your Honor, in these circumstances it is impossible that anything English has said by Mr. Bolling could have been within the scope of his employment or authorized by General Motors. General Motors specifically deprived him of any such authority.

THE COURT: The thing is the instruction that was sent out by General Motors after the 1966 decree really says: Obey the law. I suppose General

Motors would always take the position that its district managers and so forth were supposed to obey the law.

But what if they don't? A vice president -- I suppose General Motors would always take the position that he is supposed to obey the law, but what if the vice president doesn't do that and engages in price fixing?

Suppose the vice president of General Electric engaged in price fixing or rigged bidding? How does a corporation get into a conspiracy if they don't have people at some responsible echelon doing it and if that doesn't bind the corporation the corporation is never bound.

MR. KAPLAN: There are two answers to that. The first and most important, of course, is that Mr. English was not the vice president.

THE COURT: I know. But he was somebody called the district manager, so you are dealing with something a little different than a file clerk.

MR. KAPLAN: I wonder if the evidence shows that. Mr. English testified at some length as to his duties about a district manager, page 715 of the hearing transcript. I think the words "glorified peddler" were usedto describe what he did, and that's a pretty fair description. What he did was to go around and talk to the dealers and to take their orders back to the zone office, but he had no authority to act on anything that happened there. He was really selling cars. He was a salesman.

Passing that, this instruction which General Motors sent out went rather beyond the question of simply to obey the law. For example, a paragraph appears at page 3 of Defendant's Exhibit D which reads:

In the daily operation of Chevrolet Motor Division, business relations with Chevrolet dealers, representatives of Chevrolet, will continue to sit down and talk to a dealer about the dealer's business as they have in the past; however, Chevrolet Motor Division personally have been instructed not to discuss with any dealership, principals, officers or employees or with any dealer associations their members, officers, or employees any activity of any other General Chevrolet dealer involved in the sale of Chevrolet motor vehicles to or through discount houses, referral services, or any other class of persons engaged or selling or offering automobiles for sale.

THE COURT: Let's suppose that English went around and talked to Chevrolet dealers and did encourage them to withhold sales to Nabcor. Let's suppose the worst, that the Chevrolet dealers were in touch with each other and in touch with English and agreed that they would frustrate Nabcor in attempting to get new Chevrolets and wouldnot sell to them. Let's suppose English said "I'll use every bit of influence I have to try to punish you if you don't do this."

When we were talking about this subject before, the concept of parent authority creeping in, I think that we all agreed that we were not sure of what applies in the evidence situation and exactly how to apply it.

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MR. KAPLAN: I think I can answer that today. That is, that it has no place here today. There is a case which I think is really directly on point, Judge Van Duzen's decision in United States v. Ward, quoted at page 5 of our memorandum.

In that case the government etablished that a gentleman named Doyle, who worked for a baking company in Philadelphia, that is, the Philadelphia manager, had engaged in price-fixing discussions with a number of people and Judge Van Duzen held this didn't bind the company because there was no showing by plaintiff that this fellow Doyle had the authority to fix prices and that the people in the company who had such authority had no connection to the conversations in question.

On your Honor's hypothesis,and that is not the fact --

THE COURT: That doesn't expressly deal with apparent authority.

MR. KAPLAN: No, of course not,but this is a case in which he was confronted with the question whether the participation in the price-fixing complaint by the Philadelphia manager of this baking company, who certainly had apparent authority on any stretch of the imagination, certainly more than English may have had, faced with this question of whether this gentleman's participation in a conspiracy bound the company, and he held not on the ground that this man had no authority to set prices for the company, and we have the precise analog of this case because what English is alleged to have said to Hamister is, "I will see that the dealers won't get any more cars if they sell to Nabcor," the testimony is clearly on this record that English, the district manager, the lowest ranking field organization title in the Chevrolet organization, had no such authority.

THE COURT: Isn't that a question of credibility if he says he had no authority, but the plaintiff I assume contends he had authority and he wasn't just acting on a lark of his own, right?

MR. PERSON: Correct.

THE COURT: Now, if the plaintiff wants to put together a case to the effect that there were enough of these refusals and enough people uttering statements like that, that it must have come from somebody above the people out there just making utterances.

I suppose you could say, "Well, that is an issue in the case." Let me just go to another thing, and this will take a little time and get into a broader problem.

We ultimately will be faced with the question of whether this case gets beyond the plaintiff's proof. I assume there will be a motion to dismiss at the end ofplaintiff's case, right?

MR. KAPLAN: Yes, sir.

THE COURT: The thing is obviously, or one thing that is obviously going to be important on such a motion is to try to have some idea of whether the plaintiff can make out a case or plaintiffs can make out a case from showing instances here and there of maybe a problem about obtaining a car or a few cars, statements here and there.

Is that enough to make out a case of conspiracy against General Motors? Because it seems to me that the facts are right now, they establish, conclusively to the effect that there was no blanket deprivation, nobody could even sensibly talk about it, because we have the evidence that Nabcor obtained cars, at least I am clear about everything but Cadillacs, and I am not so clear about Cadillacs, but that really isn't important in my proposition.

They obtained Pontiacs, Buicks, Chevrolets and Oldsmobiles from all through the period from various dealers.

Now, it seems to me that absolutely negates any idea that anyone with authority of General Motors to stop the car sales to Nabcor was doing so, any one person, any committee, any department or whoever would do such a thing, at least to preclude any idea there was a successful conspiracy to do such a thing.

Now, I guess there are possibly alternative theories. One is that you can have a person, at least in a criminal case, be guilty of the crime of conspiracy without it succeeding. But I am not sure what application that has in a civil case where damages are sought.

But, secondly, it seems to me there may be an alternative theory of something less -- there may be was there a conspiracy in Buffalo? Maybe there was a conspiracy at Rohrer or Ruckle. Maybe there was a conspiracy at Mid-Town. But those are localized things, obviously much lower level than any general authority in General Motors who could lay down and edict any say, "Do all you can to prevent it," and the question is whether that would be a conspiracy for which General Motors is liable.

So what we are talking about now is very basic because I suppose if the case were nothing -- let's suppose the case were a claim, maybe Count 1, the claim that Robert English and Mr. Womack entered into a conspiracy with Clements-Gillogly and maybe one or two others in Buffalo, and it was limited in time. Maybe you would have something that could go to a jury if you had that isolated little thing, and that was an issue and that was a separate count. I am just talking about what gets to a jury and what gets past the plaintiffs' case.

Maybe you would have -- I don't know whether you would or wouldn't -- but at least you have something quite different there than if you are talking about a conspiracy by General Motors to do this whole thing. So I am just really thinking out loud and I wanted to see the relationship of our evidence problem to the ultimate problem of whether we can talk about a conspiracy about General Motors when really you certainly do not have any enforced conspiracy affecting all cars. It just isn't here.

MR. PERSON: I believe the fleet alotment and the retail allotment provide that overall thing.

THE COURT: Look, I don't even want to get into that. I just disagree and I am prepared to say that right now. Let's not shift the ground.

Are you trying to go to the jury on the express, intentional conspiracy to boycott or are you dropping it? If you are dropping it, I want to know once and for all and then we will deal with that. I take it you are still insisting on it?

2 We always insisted it is both structural and the specific boycott against Nabcor.

THE COURT: You want to hold on. That is what I am talking about, the specific boycott, and I don't want to switch on to some other alley right now. I want to talk about the allegations of the specific boycott.

MR. KAPLAN: Your Honor, I think I can try to answer your question between the evidence problem and the kind of scattered conspiracy that you were just outlining and the alternative notion that General Motors just tried to wipe Nabcor out and some high level policy is really there.

One might conceive of a case in which there was so much evidence of local level employees taking action against somebody where some kind of inference could be drawn that they were acting pursuant to proper authority. But in this case I don't think any such inference is available for two reasons.

The first is that in fact the plaintiff did get all these cars and all of the facts that your Honor just alluded to.

The fact of the matter is that many, many dealers all over the place sold to them. General Motors at various times paid a fleet allowance to Nabcor even though they weren't qualified for it and there are so many other odd sort of facts like that.

There was a preliminary hearing, the letter that Mr. Maiorana got from the general sales manager of Oldsmobile. Sure, it was a form letter but it asked the people to give him all the help they could think of. If there was a conspiracy to wipe out Nabcor, the general sales manager of Oldsmobile isn't going to get a form letter like that out.

THE COURT: What do you contend, when you are dealing with a civil case alleging conspiracy by a huge corporation like General Motors, what do they have to show, what would they have to show to hold General Motors liable?

MR. KAPLAN: I think they have to show there was a specific injury as a proximate result of the action taken by the General Motors employee and that the action that was taken was within the scope of his employment or expressly authorized by the company.

THE COURT: How does one get, just hypothesize a situation where there would be a General Motors employee or group of employees who would have the authority to bind General Motors to liability and, at the same time, where their actions would be admissible against General Motors. I guess you almost have the same question.

MR. KAPLAN: It is very much the same. Certainly I would say that officers of the company obviously bind the company in most circumstances. I don't want to make a flat, general statement. For the purpose of this discussion I think we can assume that.

Also assume that clerical employees and people of that nature, production line employees cannot.

Somewhere in between the line has got to be drawn. We submit English is on the side of the line at least to the specific facts, he is not binding the company.

Among other things, the dealers were

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specifically told by the company that nobody in English's position or anybody else had the right to discuss matters such as we are concerned with here with them and asked dealers to help the company and force this policy.

Somewhere between Bob English and the chairman of the board you draw the line and the question is I don't think we have to confront this morning for the purpose of deciding whether this witness's testimony about English comes in.

You might, for example, have a harder question on the issue of Di Simone's alleged statement to Anthony Maiorana.

Your Honor will note we didn't object to this statement.

THE COURT: Who is Di Simone?

MR. KAPLAN: At the time the regional director of the fleet section in Philadelphia. At the time on December 13 when he met with Anthony Maiorana, we didn't object to the admissibility of that statement. We have in the past and expect to put Di Simone on the stand, but the key to Di Simone's problem is quite simply this: it was the plaintiff's story, the story is Di Simone came in and said he knew they were buying from Rohrer in January, 1968, and Rohrer cut them off and the facts are absolutely clear that isn't true. Rohrer sold 83 cars from January, 1968, until the end of December. Therefore, it doesn't mean anything as it relates to Di Simone because it is absolutely clear, even if Di Simone said what he is cjarged with saying, and we claim he did not, no injury flowed from what he said.

If he is acting within the scope of his employment, you would have a question here. That is why we made no objection as with English because we didn't want to burden the Court with it, and Zibold, for obvious reasons.

We make it about English because we think it is clear because it is beyond the scope of English's duties and that the company specifically instructed dealers English had no right to talk to them on this subject and obviously because the evidence, if it comes in, is extremely prejudicial.

MR. PERSON: The zone manager, Mr.Womack, refused to talk with Mr. Strimple when he called and the district manager is the one that has closer contact with the dealers and, for that reason, the dealers can very well believe, and I think it is a question of fact for the jury, that the extent to which the dealers would believe that English could carry out was he was threatening.

THE COURT: Could I see the exhibit we had in the preliminary hearing which shows the sales of the Buffalo area?

MR. KAPLAN: Yes (handing to Court).

THE COURT: Another problem is that you have these divisions. Suppose that within General Motors there could be activities undertaken by the Chevrolet people, that would not be joined by the Buick people or the Pontiac people. I don't know their setup and I don't know their attitude, but I gather there is a certain amount of competition, there is a certain degree of autonomy and so forth.

Now, what would happen if you had, and I suppose that within each division there are some officers, right?

MR. KAPLAN: Yes, sir.

THE COURT: Let us suppose you had somebody high enough up in the Chevrolet Division that he could bind the company, both in the sense of evidence and in the sense of substantive liability.

Let us suppose this hypothetically -- we are not going to try to figure out who that would be and so forth. I am wondering this, he is not somebody under my hypothesis, I would like to hypothesize that he is not somebody who would be going around and trying to get the people in Cadillac and Buick and Pontiac Division to join him, nor would he have any authority over them.

MR. KAPLAN: That is right.

THE COURT: He is not high enough in General Motors to have a kind of overall authority over the sales policy and the competitive activities of General Motors as a whole in the auto business. He is just a Chevrolet man.

3 So one of the things I don't know and I am trying to think about is this: if there were evidence of conspiratorial activity by somebody high in Chevrolet, but no such evidence about anybody high in the other divisions, would that bind General Motors and would that create civil liability on the part of General Motors?

I suppose it would. General Motors is responsibile for its high-level Chevrolet people and you certainly could have a conspiracy to deal with improperly and unlawfully with the marketing of Chevrolets. I am just talking and trying to answer my own question, but I think that is fairly evident.

I guess the real problem, though, is the echelon at which this occurs.

MR, KAPLAN: That is the real problem plus the explicit instructions not only internally but externally, and that, if I can avert to something you said, the apparent authority question, because on this question it is clear English had no apparent authority vis-a-vis Gillogly because General Motors not nine or ten years before --

THE COURT: How would that be known to Mr. Bolling? There are no instructions issued by General Motors to Mr. Bolling.

MR. KAPLAN: In point of fact, there were, because Mr. Bolling in 1967, and I think he testified in 1966 was a salesman at Gillogly Chevrolet. I don't know whether he saw the letter or not, but the key point is this:

If English made a statement, which we deny, the object of those statements had nothing directly to do with Mr. Bolling, it was to tell Gillogly Chevrolet not to sell and the target of the statement was Gillogly Chevrolet, who knew English had no authority to make those statements. Mr. Hamister so testified.

THE COURT: One thing that really weighs pretty heavily in favor of Mr. Kaplan's argument is this record about car sales. If English had authority to say what he said and he did say what he said and the plaintiffs aren't putting this in evidence to just show a statement was made, they are putting this in evidence as an alleged admission or statement indicating the act was done.

If it was just chit-chat it doesn't mean anything anyway. But the purpose of putting this evidence in is to show that this is something General Motors intended to do and did do.

The idea would be that English was -- he either had the authority to carry out the threat or else he was speaking for somebody who did have authority to carry out the threat, all being evidence of the actions pursuant to a threat. Otherwise it wouldn't mean anything.

Now, if the plaintiffs are trying to prove a threat was made and carried out, i is an awful odd piece of business because within a very short time Clements-Gillogly accepted an order. On this exhibit when I had the preliminary hearing, he got orders accepted January 30, 1968, which was then filled.

So if he had authority, if he was speaking about a real threat, the threat didn't materialize.

MR. PERSON: No. 1, Nabcor couldn't buy cars during 1967 with the exception --

THE COURT: When was this?

MR. PERSON: A statement by Mr. English I believe was in September or October, 1967. So that General was cut off in the Buffalo area during that period of time.

THE COURT: What was this cutoff? He had 15 or 17 orders he never gave to a living soul. What is the cutoff?

MR. PERSON: There will be testimony about all the dealers they went to during this period, 1967, and refused to sell them for reasons they --

THE COURT: I haven't heard a word of that. Is somebody going to testify?

MR. PERSON: Yes.

THE COURT: When is he going to so testify? He has been on the stand a while.

MR. PERSON: We are getting into that.

THE COURT: When are you going to get into that?

MR. PERSON: I can do it, you know, but none

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of the dealers up in the Buffalo area would sell General Auto, and this was in 1968. But, in other words, General was blacked out by all dealers during this time Mr. English was doing what the testimony will show he was doing.

So I don't know how long you have to show that the activities were, until after you are destroyed or out of business.

THE COURT: I just don't think that is in the case. I would like to have proof of that and I would like to have something concrete rather than somebody's talk.

I would like to have some records of the orders placed. I heard for weeks about 44 orders placed to Colonial Cadillac, absolute bunk.

MR. PERSON: Your Honor, you are just --

THE COURT: Just bunk, and there is no other word for it. We are embroiled in this litigation which is the biggest waste of business I have ever experienced.

We have the documents up from the Department of Justice hoping they will contain some orders and they contain nothing.

MR. PERSON: They only contain cars sold, they didn't contain the cars they didn't sell.

THE COURT: In other words, they threw away the actual orders they received? Of which you don't have copies?

MR.PERSON: We don't have copies, and we have dealer folders, and the records show these things had been ordered.

THE COURT: We had two witnesses from Colonial Cadillac and I didn't hear a word to justify, I saw no documents to justify the story about 44 orders given by Nabcor to Colonial Cadillac, despite the fact that I put in an urgent request to the Antitrust Division to get Colonial's documents back hoping that would show something. It showed nothing.

So I have very serious distrust of any kind of general statements, undocumented statements about orders placed, and I don't think I am foolish in having that distrust.

MR. PERSON: The log reflects those orders.

THE COURT: Orders made to whom?

MR. PERSON: To Colonial Cadillac.

THE COURT: Do you have copies of the order forms?

MR. PERSON: We only had two copies of order forms, but at the same time the fact was they did do this by telephone, so that there wouldn't have been the same order forms as developed later on.

THE COURT: Very interesting. No note apparently made, just heard about it, and let it sit in their consciousness. Nobody made a note.

MR. PERSON: These are all entered in the logs.

THE COURT: Not in the Colonial log, the Colonial documents. Nothing about anything in Colonial.

MR. PERSON: They had an order file which ehey put the orders in that were not going to be filled and said that they threw it away.

THE COURT: This action has been pending for six years and you could have done all this. 44 orders to Colonial Cadillac, I think you would have gotten a subpoena up pretty quick and gotten down that stuff.

I rather think that with all the to-do that Mr. Maiorana was having with the Department of Justice, I have a feeling that the Department would have gotten anything that existed about Colonial and whatever they got didn't include any record of 44 orders. We are going on and on and on.

4 The question we are dealing with goes beyond any alleged statement by Mr. English. I think it is a

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close question because if you look at it from General Motors' standpoint, and if you accept the fact as stated as you have outlined them in your memorandum, then it would seem to me that you would not be someone who would have any authority to bind General Motors.

From the standpoint of the plaintiffs, they want to argue to this jury and to the Court that his statement comes from somebody higher up. He is just voicing a policy that came from higher up.

As I sit here thinking, the thought does come to me that the plaintiffs have a variety of ways to prove a conspiracy in the Buffalo area and we are emphasizing so much of the alleged statement of English.

But if there were in fact a conspiracy in the Buffalo area to shut Nabcor or General off from Chevrolets, that could be proved and it would not depend wholly on this alleged hearsay, this statement that Bolling and Strimple -- and I suppose Bolling alone will attribute to English. There would be other evidence if the facts were there was a conspiracy.

There was a zone manager, I guess his name was Womack?

MR. KLEINBARD: Correct, your Honor.

THE COURT: His evidence could be presented, his testimony and, more important, one would expect there would be some evidence about results and, indeed, Mr. Person is perfectly free to put in all the evidence he can that is admissible about orders placed and what happened to orders and indeed, Exhibit E contains a lot of that information.

The problem is that they don't show very much to suppoı Mr. Person's point.

MR. PERSON: It doesn't talk about this.

THE COURT: You get all the evidence you can, but I think what General Motors' point is, and I think it has a great deal of merit, although I am worried about it, they are simply saying put in all the admissible evidence you want to about the orders that Mr. Bolling or Mr. Strimple or their companies obtained, their efforts to place those orders, whether or not they got those orders, not the conversations, but the basic facts about the transactions. That can be put in evidence.

And any admissible documents and so forth, and do it for the entire period, 1967, 1968, whatever the relevant period is.

If all the Chevrolet dealers in New York were turning these people down, that is a fact.

If they were sending orders to Chevrolet dealers and the dealers wouldn't fill them, those are facts.

But I think they are objecting to having that kind of evidence substituted for, I mean to have in lieu of real evidence on that score, this so-called statement by English, who really, they said, had no authority to cut off suppliers or do anything like that.

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MR. KLEINBARD: Your Honor, I would like to add this -- you have already looked to it and perhaps it's not new but I think even if you were to concede -- your Honor has been saying out loud that the question is a close one as to whether ornot he had real or apparent or any kind of authority coupled with Defendants' Exhibit E which shows a fulfillment of orders and no hard evidence showing a refusal to fill any orders, no records or anything of that sort, in that context it seems to me even if the question is a close one -- and we respectfully say it is not but conceding for the moment that it is -- there is just nothing, no logical inference you can draw, which would justify letting in the English statement on the theory that it came down from on high, because there is no hard evidence of any kind as to the period of which Mr. Person is talking, namely, the period immediately preceding January 30, 1968 following which it was undisputed all the cars were delivered that they ordered.

THE COURT: Did you take Womack's deposition?

MR. PERSON: Yes.

THE COURT: Let's talk about the echelon

for Chevrolet's sale in the Buffalo area. You have this thing called a zone manager?

MR. KLEINBARD: Yes.

THE COURT: That was Womack?

MR. KAPLAN: That's correct.

THE COURT: Was he considered an officer?

MR. KAPLAN: No.

THE COURT: What's the next echelon above the zone manager?

MR. KAPLAN: Regional manager.

THE COURT: Who was that?

MR. KAPLAN: I believe his name was Lackey.

THE COURT: Did you take his deposition?

MR. PERSON: No.

THE COURT: Let's take a short break. We'll resolve this.

(Recess)

(In open court)

MR. PERSON: In continuation of the discussion, your Honor?

THE COURT: Yes.

MR. PERSON: There was that bulletin of the BADA, September 29, 1967, Exhibit 310 in evidence.

the point for which it is offered than any other reasonable evidence which the proponent can procure through reasonable efforts, and the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

I think that 803, subdivision 24, is kind of helpful to look at because it talks in general non-technical terms about the admission of evidence.

I would say that there is nothing here to justify admission of this statement under subdivision 24. There is no guarantee in my mind of the trustworthiness of what is testified to. I think we have a real lack of other available evidence on the point which could be and could have been developed. I think quite the contrary -- of being something which I would admit as a matter of discretion because I felt it was trustworthy, I think the testimony is quite to the contrary.

The only reason I can see under the rules for departing from the requirements of 801D2 is if I applied 803, subdivision 24, my general discretionary power, and, as I say, I decline to do that. So we are back to 801D2.

I just don't think that there is a sufficient foundation for the application of that.

You may be able to provide a foundation, but I think what you better do, Mr. Person, is to get through all of the evidence that Bolling has to give and see if there is a foundation at that time. That involved, it seems to me, a much more careful, thorough, review of the 1967 situation which took place around the time of these alleged statements.

You argued to some extent on the basis of refusal to deal, but there is nothing but the vaguest kind of testimony about the refusals to deal, and the evidence so far is that most of the orders came in he never bothered to place. That is not very much about refusals to deal.

Talk about Exhibit 339, this Buffalo situation has always been crucial to you. To sit here and not have any deposition or any testimony from Womack is quite a problem, to say nothing of other people of higher echelons than English.

In other words, if General Motors was authorizing procedures in Buffalo to cut Nabcor or General off, I am perfectly convinced it took somebody besides English to do that. There is no evidence that English had in fact any authority to cut any dealers off.

I'm putting aside the question of whether his statement could be evidence, but as far as the fact of whether English could cut dealers off or cut their allocation or interfere with their franchises, there is not a shred of evidence that he could do any such thing, so he could not really be the author, he could not be the architect, he could not be the fellow at General Motors to plan, to conceive, to be the conspirator, so to speak.

Who was the conspirator? We don't have any evidence of that at all. The people that might have occupied that role have never been deposed. Sure you took the deposition of Roche and Donner, but they didn't help you at all.

If you are going to talk about a conspiracy in the Buffalo area you have go get down to brass tacks and put in some evidence. So far it's not here and it will not be made up by some so-called threat by English. That's all there is.

Let's get the jury back in and see what you can do.

What I'm holding is that as of thepresent moment you have not supplied a foundation for the admission of that testimony but I won't bar you from trying to do so, of course.

(Jury in box)

BY MR. PERSON:

Q Mr. Bolling, did you list all the places where you attempted in Buffalo to obtain sources of GM automobiles? Would you go through and think carefully and try to list them?

THE COURT: He has done that already.

MR. PERSON: I didn't ask him to be complete at that time.

Q In addition to the ones you mentioned before.

MR. KAPLAN: I'm sure he did.

MR. PERSON: I didn't ask him to be complete.

THE COURT: I think the record will probably reflect otherwise, but you go back over it.

What are the places where you personally attempted to get, set up, sources of supply, General Motors cars?

THE WITNESS: Ken Dengler, Dengler, Clements-Gillogly Chevrolet --

THE COURT: Any others?

A THE WITNESS: Myself and Mr. Strimple were at Ray Lacks Motors.

Q What kind of dealership is that?

A Chevrolet Olds.

Q Are there two Lacks dealerships in that area?

A I think there are three, if I am not mistaken.

THE COURT: That's four companies.

Q Canyou think of any other Chevrolet dealerships?

A No. Not that I personally contacted.

Q Canyou think once again of Cadillac. Can you recall any Cadillac dealerships now?

A None that I personally contacted.

Q For Buick you mentioned Paul Batt and a Buick dealership in Lancaster. Any others?

A No.

Q Oldsmobile, you had mentioned Ken Dengler's dual as a Chevrolet-Oldsmobile dealer too.

Any other Oldsmobile dealers?

A None.

Q And Pontiac you did not mention any?

A None.

Q Are you aware of any other dealerships in the area which were solicited by General in 1967 for purposes of obtaining new sources of supply for new automobiles other than the ones you have mentioned?

A Glen Campbell Chevrolet, Brown Pontiac, Jack Stevens Buick, and I believe Tinney Cadillac, Keller Chevrolet -- and that's about all I know for sure that were contacted -- Bob Baines Chevrolet also.

MR. PERSON: I have here as part of Exhibit 619 a list of the Buffalo automobile dealers association membership roster as of April 30, 1967.

With the Court's permission I would like to be able to let him review this roster and see if he can add any additional dealerships from memory that General attempted to do business with during 1967.

THE COURT: All right.

Q Don't read out any except a dealership you would want to add to the list.

MR. KAPLAN: Can we limit it to dealers that the witness personally contacted or alternatively make it clear whether he's giving us hearsay or not?

Q Be clear as to whether you attempted yourself or whether you believe that General attempted to obtain such dealership as a source of supply.

(Pause)

A There is one here that I personally contacted, Delacey Motors.

Q Was that a Dodge dealership?

A Yes. It's on 522 Broadway, Lancaster, New York.

Q Was Mr. Delacey at that time the head of the Buffalo Automobile Dealers Association?

A Yes, he was the president.

(Pause)

I know there were more dealers contacted by Mr. Strimple, but as to pinpoint them I cannot do it to tell you exactly which ones they are.

Q Have you looked at both pages of the exhibit?

A Yes.

Q Do you recall approximately when you went to Ken Dengler Chevrolet-Oldsmobile?

A I believe it was sometime in late October of '67.

Q Did you have any orders?

A Yes, we did.

Q You say "we." Did you go alone?

A No.

Q Whom did you go with?

A Mr. Strimple.

Q Could you state how many orders you had?

A Seven.

Q Were these the orders that came from Multi-Make?

A Yes.

Q Whom did you speak with at Ken Dengler?

A Ken Dengler.

Q Was anyone else present?

A No.

Q State what you asked him.

MR. KAPLAN: I object to that. It's a hearsay problem again. I object to the converstaion.

THE COURT: I think what we have to do -- we have ruled so many times in this trial -- he can give us the fact about whether he placed the orders, or attempted to place the orders, and did they fill them or didn't they, but a lot of discussion, we can't have that.

Bring out whether he attempted to give the orders and what happened, as far as whether they were filled or not filled.

Q Without saying --

THE COURT: Dengler was Chevrolet-Olds?

THE WITNESS: Yes.

THE COURT: How many orders for Chevrolets or Olds did you have?

THE WITNESS: They were all Chevrolets, I believe.

THE COURT: All seven?

THE WITNESS: Yes, sir.

THE COURT: You may proceed, Mr. Person.

Q Did you have any discussions with Mr. Dengler outside of the premises of Ken Dengler Chevrolet-Oldsmobile?

A Yes.

Q Where did this take place?

A On the same occasion in a restaurant.

Q Did you discuss any orders you had at that time?

MR. KAPLAN: Objection.

Q Did you discuss the orders you had at that time?

MR. KAPLAN: Objection.

THECOURT: Did you try to get him to get you seven Chevrolets?

THE WITNESS: Yes, sir.

THE COURT: Did you ask him to fill your

orders for seven Chevrolets?

THE WITNESS: Yes, sir, we did.

THE COURT: Did he accept the orders or did he refuse them?

THE WITNESS: He accepted the orders.

THE COURT: He accepted the orders?

THE WITNESS: Yes, sir.

Q Did you communicate with Mr. Dengler subsequent about these orders?

A Yes.

Q When did that take place?

A Within a couple of days from the time we placed the orders.

Q Do you recall who communicated with what person?

A He called me.

Q At that time did you learn from him that you could not obtain those cars through Ken Dengler Chevrolet?

A Yes, I did.

MR. KAPLAN: Objection. I move to strike.

THE COURT: Overruled.

He declined them at that time?

THE WITNESS: Yes.

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Q You mentioned a Clements-Gillogly Chevrolet. You used to work there, you stated?

A Yes.

Q You stated that you personally had attempted to do business, place orders, with them, is that correct?

A Yes.

Q Do you recall when that was in relation to this prior incident you just described?

MR. KAPLAN: I object to that. He assumes it was previous.

MR. PERSON: I just said to describe whether it was before or after the incident the witness just described.

A It was before.

Q Can you state what you did?

A The same thing we did with Ken Dengler. We went in and laid out the format of General Auto Sales.

THE COURT: Did you place any orders or did you try to place any orders with Clements-Gillogly?

THE WITNESS: Yes, sir.

THE COURT: How many?

THE WITNESS: The same seven.

Q Let me be careful here because I don't want you to state anything that anyone told you at that meeting. It's very important.

Were you talking with Mr. Holstead at that time?

A Yes.

Q Who was he?

A He was a new car sales manager.

Q Were you talking with Mr. Hamister?

A Yes.

Q Who was he?

A A co-dealer.

Q Did you offer orders to them?

A Yes.

Q Did they agree to take the orders?

A No, they did not.

Q You mentioned Dengler Chevrolet in Fredonia?

THE COURT: As far as the hearsay problem, which is our everlasing bane, Clements-Gillogly is a defendant, so that of course puts Clements-Gillogly in a little different light than Ken Dengler.

Q Would you relate the entire conversation that took place at this itme at Clements-Gillogly

Chevrolet?

MR. KAPLAN: May we approach the bench?

THE COURT: Yes.

(At the bench)

MR. KAPLAN: My purpose in coming up here is that English, according to the witness, was there and the witness ought to be told not to relate anything English has alleged to have said.

THE COURT: If the case were being tried solely against Clements-Gillogly that would be academic.

MR. KAPLAN: But we are here and we have a problem.

THE COURT: He's suing Clements-Gillogly and he has a right to being out allthe conversations that took place.

MR. KAPLAN: Let me propose than that if the witness is to testify to anything other than what was said at the meeting, that your Honor instruct the jury that there is no evidence that English had any authority to make these statements, or on the premise that anything was ever done about it, and, of course, I would adhere to my original position that the conversation should not come in at all with regard to what English said but if your Honor overrules it I would ask for this instruction.

MR. PERSON: A ruling on the ultimate admissibility would be reviewed if it's insufficient but not to say that none of the information that has been heard so far --

THE COURT: Did he go to Clements-Gillogly besides the once when English was there?

MR. KAPLAN: He claims there was a restaurant conversation.

THE COURT: I thought he went into Clements-Gillogly at some early point and tried to place the seven orders.

MR. PERSON: This occurred when Mr. English appeared on the scene.

THE COURT: He was never there before English was on the scene?

MR. PERSON: I don't believe so, but he had worked there so I doubt if he'd go there.

THE COURT: If it's in, it's in. I don't know why we spend so much time on this.

MR. KAPLAN: One of two things is so: Either the conversation should be related with the fact of English's presence known but excluding anythng

English is alleged to have said -- I think that's what we are entitled to; or, alternatively, if your Honor takes a different position, that the jury has to be instructed that nothing English said could be considered against General Motors at least at this time, there is no showing he had any authority, I think the former position, the excision of anything English said is what is required. Let Mr. Person argue to the jury as to what inference can be drawn fromthe fact he was there.

THE COURT: No. We will not exclude it. I'll talk to them about the authority.

(In open court)

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THE COURT: Ladies and gentlemen, apparently the witness is going to testify about conversations which took place at Clements-Gillogly and the witness will testify about certain things said by a General Motors employee by the name of English.

Now, English it appears was a district manager, and what that means presumably will come out in the evidence. We had some discussion among the lawyers about how to handle this evidence, and I think the only thing that I need to tell you is this:

That ultimately you will have to be concerned and I will have to be concerned about the level of activity of persons at General Motors, and what I mean is this.

Let me preface it all and I am not of course attempting to vouch one way or the other for it or to indicate whether you should believe this evidence or not, that is strictly a matter for you.

But if you do consider it and believe it, then you will have a question and this question will crop up in other connections, if someone in General Motors makes a threat or statement or does something, General Motors is a big company and General Motors has lots of employees at all echelons from the chairman of the board down to people who do filing, and there is nothing wrong with filing but the person doing the filing doesn't run the company, doesn't set the policies.

So the question will be whether a particular level of employee had the authority to speak to General Motors, to carry out anything he is supposed to have said. So you can listen to this evidence and hear the evidence, but among the various questions you must keep in mind, and this will be developed further, is, did the person supposedly making these statements have the authority to do the kind of things that he is talking about?

Just keep that in mind in a general way as one of the issues you will have to consider.

All right, go ahead.

BY MR. PERSON:

Q This goes back to Clements-Gillogly Chevrolet and do you recall when you were discussing the General orders with Mr. Holstead and Mr. Hamister whether anyone else had joined that meeting?

A Yes, they did.

Q Will you state who joined the meeting?

A Robert English.

Q Did you know this Robert English?

A Prior to this?

Q Yes.

A Yes.

Q Who did you know him to be?

A District manager from GM, dealer rep.

Q You stated that you worked with Clements-Gillogly Chevrolet previously?

A Yes, I did.

Q Had you ever seen Mr. English on the premises of Clents-Gillogly Chevrolet previously?

A Yes.

Q --Could you state what activities you saw him doing?

A He again represented General Motors to the effect -- the only thing that I know he did while he was in the dealership was to control and advise in the ordering of cars and the allotment of cars designated to the dealer.

MR. KAPLAN: May I have a voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q How do you know, Mr. Bolling, that Mr. English controlled in the ordering allotment of cars?

A Well, because in his files of papers that he carried, he carried a copy of the IBM sheet which came

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out stating the cars ordered.

Q Do you know of your own personal knowledge who prepared the IBM sheet?

A I imagine the computer did.

Q Do you know of your own personal knowledge whether Mr. English had anything to do with preparing the IBM sheet?

A No.

Q Do you know of your own personal knowledge whether Mr. English decided how many cars Clements-Gillogly got in any particular month?

A I don't believe he decided how many they got, but he advised as to the monthly allotment and new cars ordered over and above.

Q Who did he advise?

A Mr. Hamister, Mr. Holstead.

Q In other words, he told them?

A The primary figures in the dealership.

Q He told them how many they were going to get?

A True.

Q You don't know whether English or whether someone else decided what that number was?

A No, I do not.

Q And this could very well have been a number that someone else told English and English communicated to the dealership, true?

A True.

MR. KAPLAN: I move to strike the witness's answer.

THE COURT: Motion denied. You have in effect cross-examined on this.

BY MR. PERSON:

Q Do you recall how many times you had seen Mr. English on the premises of Clements-Gillogly during the time you were employed there?

A Not the exact number of times.

Q Just an estimate.

A Numerous occasions.

Q Did you see any other employee of General Motors on the premises of Clements-Gillogly Chevrolet during that same time to that same extent?

A No, not that I was aware of.

Q As you recall, what was said before Mr. English joined this meeting over at Clements- Gillogly? How far had your discussions progressed at that point?

THE COURT: Have you given us a date?

THE WITNESS: No, sir, I don't think I have. I would say around the first part of October.

Q What year?

A 1967.

Q Can you tell us now, going back over the conversation that you described so far, how far had the conversation gone at the time Mr. English just appeared at the meeting?

THE COURT: Why don't you give us the whole conversation?

Q Give us the whole conversation before Mr. English arrived.

A Yes. As in every instance --

THE COURT: Who was there with you?

THE WITNESS: Myself, Gary Kuhaneck --

THE COURT: Strimple was not there?

THE WITNESS: No, sir.

THE COURT: Who else?

THE WITNESS: Richard Holstead and Ollie Hamister.

THE COURT: Who said what?

THE WITNESS: Like I said, in all instances we laid out the format of the Nabcor System as to what we were attempting to do, buy new automobiles, sell them at a discount rate.

The number of cars that we would be ordering through this dealership, and just giving a basic idea of how we were operating and leading into their commitment to us as a dealer opposed to our commitment to them for a certain number of cars.

THE COURT: I don't think it means anything for me or the jury to give a list of topics. What did you say about these topics before you get to that, is this the first time you had gone to Clements-Gillogly about Nabcor business?

THE WITNESS: I can't remember whether I went or called Holstead on the phone. Mr. Holstead and I worked together when I was with Cottrell Ford and I called him and asked him about this and I believe I called him and he said that he would have to set up a meeting between myself, Gary Kuhaneck and Mr. Hamister.

THE COURT: But this was the first meeting?

THE WITNESS: Yes, sir.

THE COURT: And that conversation on the telephone would have been the first telephone conversation about Nabcor business?

THE WITNESS: Yes, sir, the first contact.

THE COURT: Now, what was said about these topics that you mentioned?

THE WITNESS: We told them that we were going to buy new automobiles, sell them at a discount rate.

Of course, my broker being in the same area as Gillogly Chevrolet, they were aware where it was going to be.

And we told them that we would purchase from them between 200 and 250 cars a year and like to purchase these cars at a fixed dollar value.

THE COURT: Did you mention the fixed dollar value?

THE WITNESS: Yes, I believe we did. I believe it was either $25 or $50 over invoice. I believe that depended on whether they prepared the car for delivery or not.

THE COURT: Go ahead, what was said about these subjects?

THE WITNESS: Well, at this interim period they were more or less listening to what we were saying and Mr. English came into the meeting at this point.

2 THE COURT: Had they said anything before Mr. English came in?

THE WITNESS: Not that I can specifically remember. They had asked questions about how we were going to get the customers for these cars, were we going to sell one make and model or all makes and models.

THE COURT: What did you answer about these questions?

THE WITNESS: As advertised we advertised all makes and models of any cars to be sold at discount prices.

THE COURTY Did you tell them how you intended to get customersfor these cars?

THE WITNESS: Yes, sir, through advertising, personal contacts, sales people if and when we hired them.

The same prospects and procedures that you would use if you were working for a franchised dealer.

THE COURT: Go ahead, Mr. Person.

BY MR. PERSON:

Q Any arrangement or agreement reached before Mr. English came into the meeting?

A None.

Q When Mr. English came in the meeting could you please state to us what was said at the meeting and who said it?

A I believe Mr. Hamister said or asked since Mr. English was present in the meeting that if we would please back up and explain to him the same procedures

that I just went through and Mr. English said, "You don't have to do that, I know all about it.
I am aware of what is going on, what they are attempting to do. Any dealer caught selling automobiles to Nabcor will find it very difficult to get new cars."

Q Was anything else said at the meeting?
Did you say anything?

A I told him I thought his statement was a little absurd and asked him why he felt that way.

He said, "I thought you had business sense than to get involved in a slipshod operation such as Nabcor."

Q Did Mr. Hamister say anything after that?

A No, that was about the end of the discussion. We departed.

Q Did Mr. Holstead have any conversation?

A No, not that I remember.

Q Any discussion about the availability of Corvettes or the pricing of Corvettes?

A No.

Q What happened at this point?

A I left -- we left.

Q Did you have any further communications with Mr. Holstead or Mr. Hamister concerning this desire of yours to obtain a source of supply?

A We had one meeting, confrontation if you will.

Q What happened and when would thos occur?

A Shortly after the first encounter. We met by accident in a restaurant in West Seneca.

Q Located about how far from the premises of Clements-Gillogly?

A Half a mile, probably.

Q Was was there when the group was altogether? How many people were there?

A Ollie Hamister, Mr. English, Mr. Holstead, myself, Mr. Kuhaneck.

Q Can you state what was said at that meeting?

A He confirmed the fact that -- the question was asked and I can't remember who asked it -- how are we doing about getting new automobiles and selling them.

And Mr. English confirmed the fact that none of his dealers that he represented were going to sell us automobiles and, again, if any of them were caught they would find it very, very difficult to get new cars.

Q Was anything else said at that meeting?

A Not that I can remember.

THE COURT: Did you ask specifically about ordering the seven cars at either meeting?

THE WITNESS: No, we never got into that, your Honor.

Q The person whose conversation you just described was Mr. English, I gather, you just related what Mr. English said?

A That is correct.

Q Were you ever able -- did you try any further to obtain cars from Clements-Gillogly?

A I did not personally, no.

Q Do you know whether you were able to obtain cars from Clements-Gillogly at least through the end of 1967?

A I did not obtain any cars from them, no.

Q Do you know if General obtained any?

A I am not aware if it did.

Q You mentioned a Lax Buick and Opel. Did you have any communications with Lax Buick or Opel concerning obtaining automobiles?

A No, I don't believe I did.

Q Did you have any communications concerning Chevrolet or Oldsmobile?

A Yes.

Q Who did you speak with?

THE COURT: Talking about at Lax?

THE WITNESS: Yes, sir.

THE COURT: When was it?

THE WITNESS: I don't remember the exact date. I would have to say late October or early November, 1967.

Q Be careful not to state what they said to you. This is one of those, buk could you just state what your purpose was in talking with them?

A To set up a local source of supply for automobiles that we could sell through your distributorship.

Q What type of automobiles?

A Chevrolets.

Q Was there any agreement reached?

A None.

MR. KAPLAN: I object to that.

THE COURT: Overruled. Did you present to Lax the seven orders?

THE WITNESS: No, sir.

Q Did anyone give you a reason why you couldn't obtain cars?

MR. KAPLAN: Objection.

THE COURT: Let's not go into that.

Q You mentioned Dengler Chevrolet in Fredonia, New York. Do you recall when you had any communications with Dengler Chevrolet?

A At one time, I myself contacted Jimmy Dengler who was the dealer and told him what I wanted to do and he said that he was just not interested whatsoever.

Q When did this occur?

A Prior to going to -- enroute from where our offices were to Kemp. I stopped there on the way.

THE COURT: Did you tell him you wanted the specific seven cars?

THE WITNESS: No, never got that far into the discussion, because I just said we -- like talking about the Nabcor System, and he said he was not interested whatsoever.

Q With respect to Buick, did you have any additional sales which you have not testified to here today?

A No.

Q With respect to Glenn Campbell Chevrolet, did you obtain or attempt to obtain a source of supply?

MR. KAPLAN: The witness testified he didn't have any personal contact with that dealer and I object.

THE COURT: Did you have any?

THE WITNESS: No, sir.

THE COURT: That was Mr. Strimple?

THE WITNESS: Yes.

Q Lacey Motors, when did you attempt to --

THE COURT: That is Dodge. I didn't get any hearsay evidence of any statement by Mr. Lacey and that is hearsay.

MR. PERSON: He was president of the Buffalo Automobile Dealers Association.

MR. KAPLAN: He is not a defendant, your Honor.

THE COURT: Well, his association is.

MR. KAPLAN: Got nothing to do with us and I ask for an instruction on that.

THE COURT: We will see about that.

Did you have any conversation with him?

THE WITNESS: No, sir.

THE COURT: That takes care of that.

Q Did you attempt to obtain automobiles?

A From Lacey? No, I did not, because of the letter that came out by the BADA.

Q Do you know of any dealer in the Buffalo area through whom General was able to get any automobiles up to the end of 1967?

A No, I do not.

Q When did you terminate an active role with General?

A The Spring of 1968, I believe, March or April.

Q Do you know any sources of supply which General was able to obtain beginning in 1968?

A None.

Q Could you state why you left General?

A Well, we were running out of capital, working capital. It seemed apparent that we weren't going to get any automobiles.

Therefore, we couldn't perform the other function of the master distributorship which was selling franchises because we could not guarantee the people that we were selling to that we could produce the automobiles that they would need to effectively operate their franchise.

3 Q Did you at any time prior to your departure of an active role in General communicate with Nabcor with respect to obtaining any kind of assistance?

A Repeat that again.

Q Did you attempt to obtain any assistance from Nabcor prior to the time that you left an active role with General?

A Assistance as to obtaining the cars?

Q In any respect?

A We had numerous conversations with Nabcor.

Q Were you seeking any assistance from Nabcor?

A Yes, I would say we were.

Q What kind of assistance?

A We were told there was a suit filed I believe or a grand jury investigation under way, something to that effect.

THE COURT: He asked you about were you attempting to obtain assistance.

THE WITNESS: I would say in the legal aspect, yes, we were.

THE COURT: That is all?

THE WITNESS: As far as what we could do to obtain the cars, if there was anything they could do on the distributorship end of it. And we were told it was being worked on and they would see what we could do about it.

THE COURT: Any assistance besides legal assistance?

MR. PERSON: Could we have that last part

$8[illegible]:AFTERNOON SESSION
2:25 p.m.

(Jury in box)

MR. KAPLAN: May we have a brief side bar?

(At the bench)

MR. KAPLAN: Your Honor, I would like to note an objection to your instruction with respect to Mr. English for two reasons. Firstof all, I think we are entitled, in view of the inadmissibility of the evidence against GM, to an instruction to the effect that the jury is not entitled to consider statements against General Motors; and, secondly, I think your instruction can be understood as leaning to the jury the question of the admissibility of the statement --

THE COURT: I know that my instruction was not what you asked but, frankly, there is a limit to what you can expect a jury to do. I think that if you have evidence coming in about conversations with a General Motors employee, and you tell the jury they can't consider it, I don't think that's very realistic.

Another thing: I have a strong feeling that you will cross-examine Mr. Bolling about that conversation, and his version this morning was pgr2

substantially different from his version at the preliminary hearing and maybe with respect to the depositions.

I think we have an impossible thing for them to follow if you are telling them to not consider it and then you are going to be cross-examining. If you have to put on a defense you will put on your side of those events.

I don't think anything is a perfect solution, but I thought that the best thing under the circumstances was not to turn over to them the admissibility of evidence because that's not their job, but to turn it over to them in terms of the substantive question.

I realize it's an imperfect situation.

I take it you are going to cross-examine him?

MR. KAPLAN: Yes.

THE COURT: I don't think we can do it any other way.

MR. KAPLAN: I wanted to have a record.

MR. PERSON: Your Honor, isn't 309 admitted? That's within the trial period.

THE COURT: You mean has it been offered in the trial? Check it out. Check the record.

(In open court)

DONALD A. BOLLING resumed.

DIRECT EXAMINATION CONTINUED

BY MR. PERSON:

Q Mr. Bolling, you are familiar with this Exhibit 310, which is the September 29, 1967 bulletin from the Buffalo Automobile Dealers Association, are you not?

A Yes.

Q Did you ever have any occasion to have this bulletin called to your attention by any dealers in the Buffalo area?

A No, I did not.

Q Did you ever have any discussions with any dealer concerning that?

A No, sir.

Q Were you familiar with the financial condition of General during 1967?

A Yes, sir.

Q Could you state how much capital was available to General on or about October 6, 1967?

A Somewhere in the vicinity of 2500 to $3000.

Q I believe we started to go into the area of any monies you added out of your own pocket for purposes of the business over and above the amount that you had paid for the franchise fee and the $3000 that you began Multi with. You mentioned some internal repairs to the building that you used?

A We put up some temporary partitions in the office.

THE COURT: You are talking about Multi-Make or General?

MR. PERSON: Multi-Make.

Q Do you have any specific amount --

MR. KAPLAN: I object to that on the ground it's not relevant if he's talking about Multi-Make.

THE COURT: Multi-Make is not a plaintiff.

MR. PERSON: By virtue of --

MR. KAPLAN: I would like to stop him before he goes on. I suspect what he is going to say.

MR. PERSON: I think as a matter of law the plaintiff succeeded to whatever --

MR. KAPLAN: Those are the words I had in mind.

There is no evidence that General succeeded to anything that Multi-Make had except they engaged in the same business.

THE COURT: Mr. Bolling is not personally a plaintiff, is he?

MR. PERSON: No.

THE COURT: The only plaintiff is General. Neither Multi-Make nor Bolling is a plaintiff. If Bolling put in an amount of money to Multi-Make that's not relevant.

The objection is sustained.

MR. PERSON: He joined with General on October 6.

THE COURT: There is no evidence that General used the faility out of that plaza -- whatever it was. There is no evidence so far that they succeeded to that property.

MR. PERSON: To the interest in the franchise, your Honor --

THE COURT: There is just no evidence to support the idea that General could recover for any loss he took in connection with putting money into that store that Multi-Make used. I'm sustaining the objection.

Q Did Multi-Make have any obligations

outstanding as of October 6, 1967?

A No.

Q Do you recall whether beginning with October 6, 1967 and after you made any expenditures out of your own pocket on behalf of General?

MR. KAPLAN: Same objection, your Honor.

THE COURT: Overruled.

A The money that was in the bank for Multi-Make was transferred into General's account and it became one. That was between $2500 and $3000.

Q Was that part of your understanding with Mr. Strimple when entering into the October 6 agreement?

A Yes.

Q Were there any other assets owned in your business as Multi-Make which were also transferred?

A Yes. The office furniture.

Q Was there a value to your franchise prior to the October 6, 1967 agreement?

A My franchise as a broker?

MR. KAPLAN: Objection.

Q You paid money for your franchise?

A Yes.

MR. KAPLAN: May I have a question on voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q According to Defendants' Exhibit S6, which was the franchise agreement with Nabcor that you signed, did you and Mr. Strimple enter into some other written agreement with respect to your business at that time?

A No.

MR. KAPLAN: Thank you.

BY MR. PERSON:

Q Was the transfer of property to General done pursuant to the agreement as you understood it?

A To which agreement?

Q The October 6, 1967 agreement.

A Yes.

MR. PERSON: Your Honor, I would like you to reconsider your ruling on the question of the carryover of the expenditures from Multi-Make into General.

THE COURT: I don't want to spend a lot of time. It's not that much.

Your theory was what?

MR. PERSON:. That General was a successor

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to the obligations of Multi-Make taking with it whatever assets that it had, contingent or otherwise.

THE COURT: You are interested in showing an element of damages, right, that element being the 3000 or so he put in plus the other amount which he has not specified that he put in for renovation?

MR. PERSON: Plus the $5000 original cost for the franchise, which was part of his --

THE COURT: General is the plaintiff. If these things become General's assets and then the value of those assets was somehow lost because of the matters alleged in the lawsuit, I guess you could claim those things for General.

If you want to show all that was acquired by General you can do it. I'll permit that. Whatever that leads to you can do.

Let's conclude this quickly.

T2

Q Did you have any additional sums out of your pocket after you went over to General?

A I don't believe so.

Q Can you tell me how long the money that you said you had in General lasted?

A Somewhere between 30 and 45 days.

Q Did there come a time at which General ran out of money?

A Definitely.

Q When was that, approximately?

A Within 30 to 45 days.

Q After October 6, 1967?

A True.

Q You are saying that is approximately in November of 1967?

A Right.

Q Was General able to carry on the activities of its franchise as of that date?

A I don't quite understand what you mean by activities.

Q Was General engaging in advertising on and after October 6, 1967?

A Yes.

Q Did it engage in other activities in attempting to sell cars or franchises?

A No, we did not, because we could not get the cars to sell.

Q At the time that General ran out of money were you able to function as a business without capital?

A No, not really.

Q Did you have any communications with Nabcor concerning obtaining cars during 1967?

A Yes.

Q Can you recall whom you spoke with?

A Frank Maiorana.

Q Can you recall when that occurred, approximately?

A I would say somewhere around mid-October, mid or late October.

Q Could you state what you told him?

A Yes. Because we were concerned about the skepticism of customers or people that we were talking to --

MR. KAPLAN: I move that that be stricken.

THE COURT: Sustained, it is stricken.

Q Instead of telling what other people told you, just tell us what you told him.

A I called Mr. Maiorana --

Q Do you recall when you got these cars?

THE COURT: What cars?

MR. KAPLAN: He said he got none, that is what he said this morning.

Q Do you know whether anyone from General went to Pennsylvania to pick up any automobiles for the Buffalo area?

A I sure do.

Q Who went?

A Mr. Strimple, myself.

Q When did this occur?

A November or December. I know in the Winter, because there was snow on the ground.

Q Do you remember what type of cars you picked up?

A A Camaro, I believe.

THE COURT: Is that a Chevrolet?

THE WITNESS: Yes, sir.

A (Continuing) Two Pontiac stationwagons.

Q Can you recall how many times you went down there?

A To pick up the cars?

Q Yes.

A Once.

There was one other, I don't remember what it was. It was four cars.

Q Do you know the name of the ultimate customer of any of the cars?

A One was Mr. Strimple's daughter, which was the Camaro.

Q We have an entry in the Nabcor Police Book on December 12, 1967, a Camaro Sports coupe, blue, was purchased from Rohrer Chevrolet by Nabcor and sold to Theresa Strimple on December 12, 1967.

What was the reason for obtaining these cars from Nabcor in Philadelphia?

A The reason was because of the fact we had no local suppliers and we had to deliver the automobiles and Mr. Maiorana was fortunate enough to be able to produce them for us.

MR. PERSON: No further questions.

THE COURT: Cross-examine.

$87:CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Bolling, in the middle of 1967 you and this Gary Kuhaneck to whom you referred was a salesman at Hamister Gillogly Chevrolet?

A True.

Q How old were you at that time?

A 25.

Q Prior to that you had worked for a dealer called Cottrell Ford?

A True.

Q You worked there about a year and a half?

A True.

Q You were at Hamister Gillogly Chevrolet a total of four or five or six months?

A True.

THE COURT: The jury heard the name Clements-Gillogly and Hamister-Gillogly, and I think at a certain point maybe the name of that dealer changed.

The best thing for you to remember is that if you hear the name Hamister-Gillogly it refers to the same business establishment as Clements-Gillogly and different people may refer to one name or the other.

So Hamister-Gillogly equals Clements-Gillogly and then we won't worry too much about which name we use, all right?

MR. KAPLAN: I will call it Gillogly if I can.

Q Was that the sum total of your experience in the automobile business before you bought this Nabcor franchise?

A True.

Q At both of those places you were a salesman?

A True.

Q Then in the middle of 1967 Mr. Kuhaneck came to you and showed you a newspaper advertisement?

A True.

MR. KAPLAN: I would like to offer this and have it marked as Defendants' Exhibit S-7 for identification, a document which was marked as D-1 on the witness's deposition.

xx (Defendants' Exhibit S-7 marked for identification.)

Q I show you Defendants' Exhibit S-7 for identification and the ad on the left side of the page is the one Mr. Kuhaneck brought to your attention, is that right?

A Yes, I believe it is.

MR. KAPLAN: I offer it, your Honor.

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit S-7 received in evidence.)

MR. KAPLAN: I only have one copy, so I will read it to you.

(Exhibit read.)

Q After Mr. Kuhaneck showed you the ad on Defendants' Exhibit S-7 in evidence, you responded to that advertisement, right?

A Yes, sir.

Q You called up and spoke to Mr. Nash?

A Yes, sir.

Q There came a time when you met with Mr. Nash?

A Yes, sir.

Q Mr. Nash told you that he was affiliated with a company called U.S. Sales & Information Service, true?

A I believe so, yes.

Q He said that U.S. Sales & Information Service was selling franchises for Nabcor, true?

A I believe so.

Q As a matter of fact, up until 1976 you never learned that U.S. Sales & Information Service had any other relationships in Nabcor, true?

A True.

Q You never learned that was just another name Nabcor used for selling franchises, did you?

A No.

Q You were curious about the $25,000 to $40,000 income statement in that ad, true?

A True.

Q When you saw Mr. Nash you had some discussion about what substantiation there was for the reference in Defendants' Exhibit S-7 to a proven income potential of 25 to 40 thousand dollars a year, did you not?

A Yes, I did.

Q He told you that there were other Nabcor franchisees, true?

A True.

Q And told you in substance that they were successful, did he not?

A True.

Q He didn't tell you that there were any who were not successful, did he?

A I didn't ask. No, he did not.

Q Following that discussion you bought a Nabcor franchise for $5000?

A Well, in a discussion at some length after that we bought, yes.

Q Your interview had to take place before July 12 because the ad said interviews will be held July 11 and 12?

A That's right.

Q It is stipulated here that the day you bought the franchise was some time between July 11 and July 25.

You then quit your job at Giggogly Chevrolet?

A True.

Q And as a matter of fact you then received a letter from Nash congratulating you on becoming a Nabcor broker, true?

A The letter said we had been accepted.

Q I show you Defendants' Exhibit I-7 for identification and ask you if that is the letter to which you just referred?

A I believe it is.

MR. KAPLAN: I offer it, your Honor.

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit I-7 received in evidence.)

MR. KAPLAN: I would like to have marked for identification as Defendants' Exhibit T7 this photograph.

(Defendants' Exhibit T7 was marked for identification) xxx

Q After you become a broker I think you told us you rented a place on Union Road in West Seneka?

A Yes.

Q I show you this exhibit. That's the building in which you rented space, true?

A True.

MR. KAPLAN: Lest there be any misunderstanding, your Honor, this picture was not taken at the time.

Q It was taken years later, but apart from the paint job, Mr. Bolling, it's a fair representation of the building, true?

A Yes.

MR. KAPLAN: I offer it in evidence.

MR. PERSON: No objection.

THE COURT: It will be received.

(Defendants' Exhibit T7 was received in evidence) x

Q You will notice there are two large

picture windows on the front of this office. Each is in front of a large room.

A Yes.

Q You rented one of the two in the building?

A That's right. This one.

Q The one on the righthand side of the photograph?

A Yes.

Q As a Nabcor broker, when you were operating as Multi-Make you were supposed to get your automobiles from Nabcor, right?

A True.

Q You were not supposed to try to get cars on your own in Buffalo, true?

A True.

Q In fact, you did not try to obtain any cars from dealers in Buffalo while you operated as Multi-Make, true?

A True.

Q When you became a broker I think you said you got a number of orders.

A True.

Q This morning you said there were eight to ten.

A I believe that's correct, yes.

Q In fact, sir, you testified at the preliminary hearing that it was seven. You would not argue with that figure, would you?

A Seven confirmed orders that we transferred over to General, not as a total of what we sold.

Q The total number of orders you received while you were at Multi-Make was seven; correct?

A No.

Q I read to you from the transcript of the preliminary hearing in this matter, your testimony on October 6, 1976 in this court:

"Q What was the business you had as Multi-Make Auto Service?

"A Involved in the retail sales of all makes of and models of the automobiles.

"Q Did you attempt to sell any automobiles?

"A Yes, I did.

"Q Were you able to sell any?

"A Yes, I was.

"Q About how many?

"A Five or seven. I don't remember the exact number."

Now, sir, those automobiles, those five or seven or eight orders, whatever it was, you ordered from Nabcor, true?

A True.

Q In fact, contrary to your testimony here this morning you did not have any particular difficulty getting automobiles from Nabcor, true?

A We had difficulty getting automobiles from Nabcor.

Q With perhaps one exception of all of the orders you sent to Nabcor, you either got the automobiles or you cancelled the automobiles, true?

A True.

THE COURT: What was the page in the preliminary hearing?

MR. KAPLAN: Pages 15 and 16, your Honor.

THE COURT: Give me a moment.

(Pause)

Q You currently don't have any records of any of the automobile orders you received from customers while you were in Multi-Make, true?

A I do not.

Q You do not have any records of the orders you place with Nabcor while you were at Multi-Make, true?

A That's correct.

Q You don't have any records of any orders you might have placed with anyone else while you were at Multi-Make?

A That's true.

Q I'm going to go through the Multi-Make orders which are listed in Plaintiffs' Exhibit 450 in evidence. It contains eight entries relating to orders received by Nabcor from Multi-Make. They are all in the period September 18, 1967 through November 29, 1967.

The first entry appears at page 30050, line 26. It shows that Nabcor received an order for a 1968 Cadillac from Mr. Bolling on September 18, 1967. The log does not state whether the car was or was not delivered, but it lists the serial number for the car.

Was that car delivered to you?

A No, sir.

Q Now, sir, the second entry appears at page 30052, line 26. It shows that Nabcor received an order for a 1968 Pontiac from Mr. Bolling on October 19, 1967; Nabcor ordered the car from Al Wilson Pontiac and that car was delivered on January 3, 1968.

Did you forget about that one, Mr. Bolling?

A No. I believe that's one of the ones Mr. Strimple and I went down to fill and picked up.

Q You and Mr. Strimple went to fill and picked up four cars, you said this afternoon?

A Yes.

Q This morning you said you got no cars from them ?

A Not as Multi-Make. That was after I became General Auto Sales.

MR. KAPLAN: The log, ladies and gentlemen, reflects the orders received from Multi-Make.

The next four entries all appear on page 30054, lines 8 through 11. They were all for Chevrolets and all of those orders were received by Nabcor on or about November 13, 1967.

The first was for a 1968 Chevrolet Impala for a customer by the name of Bernadette Stachura. It appears on line 8. The log indicates that no deposit was received with the order.

Q Mr. Bolling, you understood when you became a Nabcor broker that Nabcor would not order cars unless it received a deposit with the order?

A True.

Q You didn't send any deposit for that order, did you?

A That's correct.

Q The second of the November 13 orders was for a Chevrolet Corvette for a customer named Joseph Morawski. That's on line 9. The log reflects no deposit for that order. You didn't send a deposit with that order either, did you?

A I don't believe so, no.

Q The third of the November 13 entries was for a Corvette. This one for a customer named Schmitt. It appears on line 10. There is no indication of any deposit having been received on that order either.

THE COURT: Another Corvette?

MR. KAPLAN: Yes, your Honor.

Q When you first sent this order for a Corvette from Mr. Schmitt to Nabcor you didnot send a deposit for that either, did you?

A That's right.

Q As a matter of fact, Mr. Schmitt paid you a $500 deposit on that order more than three months before you even ordered the car from Nabcor, true?

A I don't know about the time difference.

Q He had given you a $500 deposit before you ordered it from Nabcor, true?

A True.

Q You sent no deposit to Nabcor?

A That's right.

Q I show you a document and ask you if it refreshes your recollection as to the time interval between your receipt of the deposit from Mr. Schmitt and your sending the order to Nabcor without a deposit.

(Pause)

A I've never seen this document.

Q That was not the question. The question is this: Was it not nearly three months between the time Schmitt ordered the car from you and gave you a $500 deposit and the time you initially sent the order to Nabcor with no deposit?

A Does it say when the order was sent to Nabcor?

Q The Nabcor log says it was November 13.

A I don't remember the exact time.

Q He gave you the order in the first place on August 25, 1967, true?

A Yes.

Q That's when he gave you the deposit?

A Yes.

THE COURT: When was the order transmitted to Nabcor?

MR. KAPLAN: November 13, 1967.

Q The last of the four orders on November 13 appears on line 11 at page 30054 of Plaintiffs' Exhibit 450. It was for a Chevrolet Belair for a man named Ed Vosseler. There is no indication of any deposit on that order.

You didn't send a deposit for that one either, did you?

A True.

Q I show you a document marked Defendants' Exhibit E7. This is a letter you received on or about November 15, 1967, true?

(Pause)

A I believe. That was after we became General Auto Sales though.

MR. PERSON: I have no objection.

THE COURT: It will be received.

(Defendants' Exhibit E7 was received in evidence)

xxx

(Mr. Kaplan read to the jury from Defendants' Exhibit E7 in evidence)

Q After you received that letter from Nabcor, Defendants' Exhibit E7, you sent Nabcor a deposit on the Vosseler order and a deposit on the Schmitt order, true?

A True.

Q And you did not send them a deposit on either of the other two orders; is that correct?

A Correct.

Q In fact, sir, you cancelled the other orders on November 17, 1967, true?

A I don't believe we cancelled them, no.

Q The log, Plaintiffs' Exhibit 450, claims that the Stachura order was cancelled and the Morawski orderwas cancelled. It contains a similar entry for the Schmitt order which we will come to in a moment.

MR. KAPLAN: Your Honor, I have Defendants' Exhibit G8, which was identified by Anthony Maiorana previously. It's a Nabcor receipt book. I would like to offer receipts numbered 667 and 670 in this book. The whole book is marked. Every receipt is numbered so we can refer to specific receipts concerned.

THE COURT: You are not offering the whole book in evidence? I think you have to have some specific designation of the receipts you are going to use.

MR. KAPLAN: They're numbered consecutively.

(Receipt Nos. 667 and 670 were received in evidence)

(Mr. Kaplan read to the jury from receipts 667 and 670 in evidence)

MR. KAPLAN: I would like to offer in evidence at this time, your Honor --

THE COURT: Mr. Vosseler's car was the Belair?

MR. KAPLAN: Yes.

I offer Defendants' Exhibit Z, a portion of our third request for admissions of fact, and Defendants' Exhibit AA, which was the plaintiffs' response which admitted the matters inquired about. It relates to the delivery dates of this car and also to facts --

THE COURT: The Belair --

MR. KAPLAN: We established that that was delivered. We did not establish the date. These admissions establish the date.

THE COURT: All right.

MR. PERSON: No objection.

THE COURT: They will be received.

(Defendants' Exhibits Z and AA were received in evidence)

MR. KAPLAN: That takes care of three of these four orders on November 13.

THE COURT: We have four of the November 14 orders?

MR. KAPLAN: Yes, your Honor.

THE COURT: We have the Belair delivered February 26, 1968?

MR. KAPLAN: Yes, your Honor.

The Chevrolet for Mr. Stachura was cancelled on November 17.

THE COURT: That's the Impala, cancelled when?

MR. KAPLAN: November 17, two days after the letter from Nabcorto Mr. Bolling.

THE COURT: By whom?

MR. KAPLAN: I think the witness testified he did it.

Q You cancelled the order for Miss Stachura's car on November 17?

A With Nabcor, yes.

MR. KAPLAN: Then we have this Corvette for Morawski. This was also November 13. The log reflects --

Q You cancelled the order for Morawski?

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A Yes.

Q That was after you received a letter from Nabcor asking for the deposit?

A True.

MR. KAPLAN: Now we have only the Schmitt order left.

Q Sir, sometime in November of 1967 Mr. Schmitt asked you where his car was, true?

A Many times.

Q You told him there had been an error in the purchase order, true?

A I don't remember if we told him that or not.

Q I show you a document and invite your attention to the next to the last paragraph and ask you if this refreshes your recollection as to what you told him.

(Pause)

A I didn't say that.

Q You never told him there was an error in the purchase order?

A That's right.

Q Mr. Schmitt told you he got the car somewhere else and cancelled the order by the end of

November?

A Yes.

Q And you cancelled the order with Nabcor also?

A True.

Q The last entry on Plaintiffs' Exhibit 450 referring to Multi-Make appears at page 30054, line 12. Thatwas an order received by Nabcor, November 20, 1967, for a Chevrolet Biscayne, for a customer of Multi-Make by the name of Howard Chambers. The log contains no entry showing showing what happened to the order but it does contain the Nabcor purchase order which was 10658.

Defendants' Exhibits Z and AA, which I referred to a moment ago, the request for admissions from the plaintiffs,show that that order was sent to Rohrer Chevrolet by Nabcor and that the order was filled by Rohrer Chevrolet in February.

(Pause)

Q Let me strike that comment for a moment and come back to it.

(Pause)

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MR. KAPLAN: At this time I would offer F-7, which is a summary of what we have just gone through.

MR. PERSON: No objection.

THE COURT: Received.

xx

(Defendants' Exhibit F-7 received in evidence.)

BY MR. KAPLAN:

Q Mr. Bolling, Nabcor delivered to you the car for Mr. Chambers, right?

A Delivered to General Auto Sales, yes.

Q After you became a Nabcor broker there came a time when you began to discuss the possibility of becoming a master distributor for Nabcor?

A True.

Q You had discussions with both Frank and Anthony Maiorana on that subject?

A True.

Q You had those discussions before you signed the master distributor agreement?

A True.

Q Those discussions covered, among other things, just what you would be buying if you were a distributor franchiser?

A True.

Q I show you Defendants' Exhibit WW in evidence. This, sir, is the document or a book which you received from Nabcor, is that true?

A That is correct.

Q That particular copy of that book was given to you after you became a distributor, right?

A True.

Q You were to use that book in selling franchises?

A True.

Q Before you got the distributor agreement, Frank Maiorana showed you a looseleaf binder full of material?

A I believe so, yes.

Q The contents of the binder that Mr. Maiorana showed you before you bought the distributor franchise were the same as the contents of Defendants' Exhibit WW?

A I believe so, yes.

Q You first became a Nabcor broker in July, 1967?

A Yes, sir.

Q And became a distributor, master distributor, in October?

A True.

Q Somewhere in between those two dates were when Frank Maiorana showed you the book like WW?

A Some time prior to signing the master distributorship.

Q When you discussed the distributorship franchise with the Maioranas they made a statement to you about how much you could make if you bought such a franchise, true?

A True.

Q They showed you a written profit projection?

A True.

Q Do you know where that document is?

A No, I don't.

Q That profit projection said you could make between $900,000 and $1,000,000 a year if you bought such a franchise, true?

A True.

Q When you acquired this master distributor franchise you had a right to sell franchises to other people?

A True.

Q And the idea was that General Auto Sales, the master broker, would be the source of automobiles to any of these other brokers to whom you sold franchises?

A True.

Q As a matter of fact, you still nevertheless had the right to order cars from Nabcor?

A True.

Q When you became a master distributor there were two or three Nabcor brokers in New York State in your territory already, true?

A True.

Q Mr. Young in Watertown?

A True.

Q And Mr. Owens in Lockport?

A True.

Q And a guy named Novy in Buffalo?

A True.

THE COURT: Master distributors?

MR. KAPLAN: No, brokers.

Q They were turned over to you, correct?

A Yes.

Q And you were supposed to get automobiles for them? By "you" I mean General Auto Sales.

A True.

Q Mr. Bolling, I am going to show you a document marked Defendants' Exhibit J-7 for identification. This is a letter you received on or about October 31, 1967, correct?

A Yes, sir.

MR. KAPLAN: I offer it, your Honor.

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit J-7 received in evidence.)

q The first sentence of the secondparagraph of Exhibit J-7 saysthat Mr. Bolling has had five years active service with Chevrolet and Ford as of October 31, 1967.

Mr. Bolling, .. younever work for either Chevrolet or Ford, true?

A Pardon?

Q You never worked for either Chevrolet or Ford, is that true?

A Prior to this?

Q Yes.

A I worked for Clements-Gillogly Chevrolet and Cottrell Ford.

Q You never worked for the Chevrolet Motor Division of General Motors?

A No, I did not.

Q Or the Ford Motor Company?

A No, I did not.

Q The grand sum of your experience at Cottrell Ford was 18 months?

A True.

Q And at Clements-Gillogly four to six months?

A True.

Q Didn't add up to five years any way you cut it?

A No.

Q It says that you were a progressive Nabcor broker for over nine months.

That was false also, wasn't it?

A True.

Q Sir?

A Yes, it was false.

Q In your discussion with Nabcor before you bought the distributor franchise, you were told Nabcor was a leasing company?

A I believe so, yes.

Q Who told you that?

A I believe in the initial interview which I had with William Nash that was brought out.

Q Anybody else tell you that?

A If they did, I don't remember.

Q As a matter of fact, you were told Nabcor was an active leasing company, right?

A Yes.

Q That was false also, right?

A I don't know whether that was false today or not. I still don't know.

Q Frank Maiorana had testified in this court that Nabcor provided its brokers with a 16-weeks' training program.

Did Nabcor provide you with a 16-weeks' training program, Mr. Bolling?

A We were told that it was available to us, yes.

Q Isn't it a fact that Nabcor didn't provide you with any training at all?

A I would say training per se, no, they did not, although they did give us any advice or help we needed when it was needed.

Never really asked him for any training.

Q I will read to you from the transcript of your deposition on August 23, 1976, page 187:

"Q Nabcor never provided you with any training program after you first became a Nabcor franchisee, true?

"A Provided us with a training program?

"Q Right.

"A I would say, no."

At the time you were connected with General Auto Sales operations, sir, it maintained some business records?

A True.

Q It had books of account?

A True.

Q Records of orders that customers provided you with, true?

A True.

Q And it kept records of orders that it placed with automobile dealers?

A True.

Q It kept payroll records?

A True.

Q Kept records of withholding taxes?

A True.

Q Then there came a time when you were at Mr. Strimple's home, you were going pheasant hunting, true?

A True.

Q And on that occasion you saw the records of General Auto Sales in Mr. Strimple's home, true?

A I don't know whether all the records were there. There were some records from General Auto. Some time after I became inactive in the company.

Q Page 117 of your deposition, August 23, 1976:

"Q You saw the business records of General Auto Sales in Mr. Strimple's home on this occasion, is that true?

"A Sure."

At or about the time when you saw the records in Mr. Strimple's home, Mr. Strimple told you that he was being investigated in connection with tax matters, true?

A I believe so, yes.

Q After this occasion when you saw the records in his home Mr. Strimple told you there had been a break-in in his home, true?

A I don't remember whether in his home or at the dealership. I do know there was a break-in and supposedly the records were missing.

Q In any event he told you there was a break-in somewhere and the records had been stolen?

A True.

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Q You were familiar with those records?

A True.

Q They didn't have any value whatever except to General Auto Sales' business, true?

A I would say they had a value to anyone with General Auto Sales' business or anyone who was connected with them, maybe in a business form.

Q They were worthless, weren't they, Mr. Bolling, unless you had to operate the business?

A Not necessarily, because there were records of orders taken, money transactions, all of the money on deposit.

Q I will read from your deposition on August 23, 1976, page 119, referring to these records:

"Q They didn't have any intrinsic value except to the business, true?

"A Right."

On direct examination you testified about an occasion when you encountered Mr. English and Mr.Hamister and Mr. Holstead at a restaurant in West Seneca, a half-mile from the Gillogly Chevrolet dealership.

You testified that on that occasion someone asked how you were doing and "Mr.English confirmed the fact none of the dealers he represented would sell."

Do you want to stand by that testimony, sir?

A Yes, I do.

Q Did Mr. English say that?

A Yes, he did.

Q Mr. Bolling, you testified in this court in a preliminary hearing on October 6, 1976, just a little over a month ago?

A True.

Q You were under oath?

A Yes, I was.

Q And you testified about this encounter in the restaurant which you claim took place. Do you recall doing that?

A Yes, I do.

THE COURT: What page?

MR. KAPLAN: Page 4, line 19, and I will read from the transcript:

"Q Anything said by Mr. English at that meeting?

"The Court: Just give the whole meeting. What happened, did you meet by appointment or run into each other or what?

"The Witness: We ran into each other.

"The Court: What happened?

"The Witness: We were asked if we were able to purchase any new Chevrolets or any General Motors products.

"The Court: Who asked you that?

"The Witness: Ollie Hamister.

"The Court: Who replied?

"The Witness; I did.

"The Cpurt: What did you say?

"The Witness; No. Mr. English then said I told you before and I better not catch any of my dealers selling you cars either.

"Q Did you say anything at that time?

"A I did not. I thought he was joking, had to be joking.

"Q Did anything take place that you can recall?

"A No."

Q Have you just suddenly remembered this other statement about Mr. English confirming the fact that the dealers he represented wouldn't sell?

A I believe you just read it, Mr. Kaplan.

Q Is that right?

THE COURT: Let's take a short break and I will talk to the lawyers.

(Jury left the courtroom.)

THE COURT: Let me see if I am straight on these eight orders that we discussed earlier, if I can use this F-7.

I gather the cadillac,nobody knows at this point whether it was delivered or not?

MR. KAPLAN: The witness claims not. The order log --

THE COURT: Not what?

MR. KAPLAN: Not delivered. The order log doesn't say.

THE COURT: Let me get my notes.

What is it?

MR. KAPLAN: The witness claims that the Cadillac wasn't. The order log, however, although it does not say one way or the other whether it was delivered, it contains a serial number of the factory which suggests the car was delivered. Else where would the serial number come from?

THE COURT: All right. Now, the second car referred to on Exhibit F-7 is one of the -- I have that. That was delivered.

Then the third, fourth and fifth cars were all cancelled.

Then the sixth car was delivered. The seventh car was delivered.

Now, the eighth car you have blanks down. Mr. Bolling testified that was cancelled, right?

MR. KAPLAN: Right, and the eighth car duplicates the fifth car. It is the same customer, two entries.

THE COURT: All right. Now, just a small point. I don't understand how his testimony at the preliminary hearing was different from what he said this morning.

MR. KAPLAN: This morning the witness testified that at the restaurant someone asked how they were doing and Mr. English confirmed the fact that none of the dealers he represented would sell, and went on to say if any were caught they would find it very hard to get cars.

I maintain that the part of the statement relating to English confirming the fact none of the dealers he represented would sell is new, your Honor.

THE COURT: That is just quibbling on impeachment. Let's not waste time with it. I don't see any difference. It is just confusing.

In the future, if there is real impeachment, but don't waste time with this. It is very confusing, pick the big things.

MR. KAPLAN: I am not going to take any more time with that, but I would like to explain why I think it is important.

The reason I think it is important is that it suggests English had been around talking to other dealers about this subject and obtaining information about whether or not they were going to sell. That was never in any of the prior conversations that this man testified to.

THE COURT: All right, you draw more from that than I guess I did.

(Recess.)

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(Jury in box)

Q Mr. Bolling, on October 6, 1967, you actually had a meeting where you signed your franchise agreement as a master broker, true?

A Yes.

Q Frank Maiorana was at the meeting, was he not?

A Yes.

Q I show you Defendants' Exhibit Z6. He in fact initialled that agreement in your presence, true?

A I believe so, yes. I can't read it. It could be his.

Q He was there at the meeting?

A True.

Q He signed it as a witness, his full signature on page 5, right?

A I can't read it but I'm sure he signed it.

Q Mr. Bolling, on direct you testified that you bought the master distributor franchise for two reasons: One was to sell franchises; is that true?

A True.

Q And the other was because you were having difficulty getting cars and wanted to set up your own source of supply. Was that true?

A Well, the two reasons we wanted to set up the master distributor was, one, to sell franchises and, two, to have our own local source of supply which we had to have to be able to sell a franchise.

Q But up to that point in time you had not had any trouble getting automobiles, true?

A I had trouble getting automobiles as Multi-Make Auto Sales.

Q I'll read to you from the transcript of your deposition at page 12, line 7:

"Q At the time you first discussed, at the time you first negotiated, with Mr. Strimple did you have any problems in getting cars?

"A No. I had not really experienced any.

"Q Do you recall if Mr. Strimple had indicated to you during or before these negotiations that he in his franchie was experiencing any difficulties in getting cars?

" A Not difficulty in getting cars. The problem was we could foresee a problem of gettingthe cars from Pennsylavnia and rather than have to confront ourselves with that problem we figured to take the step, get the distributor, and do the feasible thing and purchase the cars locally."

That, sir, was the reason in addition to selling franchises that you bought the distributor franchise, true?

A No.

Q Your testimony at the deposition was false?

A No. That's not the entire reason. Neither one of us experienced any difficulty in getting cars from Nabcor because in fact we had just placed orders with Nabcor and the problem had not arisen yet.

Q You had some conversation during the recess with Mr. Person and with Mr. Maiorana and Mr. Strimple, true?

A True.

Q You had lunch with those gentlemen?

A I did not.

Q Did you see them over the luncheon recess?

A I did not.

Q You did see them this afternoon during this recess?

A Yes.

Q You flew down from Buffalo with Mr. Strimple?

A Yes.

Q You talked to him about this case?

A True.

Q Now, sir, you said when you went into the General Auto Sales franchise you had capital of $3000, $2500; is that accurate?

A Yes.

Q As a matter of fact, you had at least four times that much, isn't that true?

A As working capital?

Q Yes, sir.

A No.

THE COURT: You are talking about Multi-Make?

MR. KAPLAN: General Auto Sales.

Q On June 23, 1976, Mr. Watson, the attorney for Gillogly Chevrolet, came to your home and interviewed you?

A Yes.

Q He had with him a court reporter much like the gentltman sitting at the front of the room?

A True.

Q He asked you questions and you answered them?

A Yes.

Q You answered them truthfully?

A Yes.

Q I read to you from page 82 --

THE COURT: What is the date?

MR. KAPLAN: June 23, 1976.

Q I read to you starting at page 82:

"Q By the way, when you and Mr. Strimple started business together as General Auto Sales what in the way of capital did the two of you have in the business, as you may recall?

"A $12,000."

A few lines lower:

"Q Was this in addition to what you paid for the franchise?

A Yes."

Just to clear up a point, you said on your direct earlier that Mr. English was with General Motors. In fact, he was a district manager for the Chevrolet Motor Division?

A Yes.

Q As far as you were aware, district managers in the Chevrolet Motor Division had nothing to do with dealers in other divisions such as Buick?

A True.

Q There was some discussion on your direct about a dealer called Kem Dengler Chevrolet. This was located in Westfield, New York, true?

A Yes.

Q Westfield is at least 85 miles from Buffalo, true?

A About 65.

MR. KAPLAN: Your Honor, we'll get an Atlas eventually.

I'll ask you at this time, Mr. Person, since you referred to Plaintiffs' Exhibit 619, the list of members of the Buffalo Auto Dealers Association to concede that Kem Dengler was not a member of that association at the time in question and was not on the mailing list with respect to the bulletin you have referred to?

MR. PERSON: Have you looked it over to determine that?

MR. KAPLAN: Yes, sir.

MR. PERSON: Carefully?

MR. KAPLAN: It's been some time but I thought it was careful when I looked at it.

MR. PERSON: I think you are correct.

Q Mr. Bolling, there was some reference to buying cars for inventory or having cars in inventory on your direct testimony when you were at General Auto Sales?

A Yes.

Q In fact, you didn't have any inventory at all. What you had was one or more autos on consignment from dealers?

A Yes.

Q You didn't buy cars from dealers and put them on your lot?

A That's right.

THE COURT: What was your question?

MR. KAPLAN: In fact, the reference to inventory was a reference to the fact that there was one or more cars at General Auto Sales on consignment.

Q You didn't have any cars in inventory in the sense you bought them and then held them there, true?

A True.

Q So you didn't need any capital to finance an inventory of automobiles?

A True.

Q You mentioned earlier that you approached a number of dealers in the Buffalo area after you were at

General Auto Sales to get automobiles. You approached Kem Dengler?

A Yes.

Q And his brother Jim?

A Yes.

Q And also Lacks Motor and of course Gillogly Chevrolet?

A True.

Q You had a proposal you made for all of those deals?

A Yes.

Q What you did, in all of those approaches, was to tell the dealers thatyou were going to buy 200 or more new cars over the following year if they agreed to sell?

A True.

Q And you gave a figure in that general range to all of those four dealers?

A True.

Q And you told them you wanted to buy those cars for $25 or $50 over invoice, true?

A True.

Q And that price was considerably below the retail price in Buffalo area at that time, true?

A True.

Q You were a salesman, sir, at Hamister-Gillogly or Gillogly Chevrolet in the first half of '67, true?

A True.

Q That was during the 1967 model year?

A Yes.

MR. KAPLAN: Your Honor, if I may refer to the prior stipulation, it has been stipulated during this trial that during the 1967 model year Chevrolet fleet plan which provided, among other things, that a dealer who sold an automobile to a qualified fleet user was eligible to receive from General Motors a payment of $50 for each car sold to the qualified fleet user.

"Qualified fleet user," in general terms was a leasing company, a daily rental company, or a company that used cars in its business. In the 1967 year a fleet user had to buy 20 or more cars in the preceding year for such dealer to qualify for such a payment.

Q Mr. Bolling, General Auto Sales never leased any automobiles as far as you know, true?

A True.

Q And did not in the year preceding your approaches to these dealers in Buffalo buy any cars for leasing or rental purposes or for its own use, true?

A True.

Q And you knew from your experience as a salesman at Gillogly Chevrolet that General Auto Sales could not qualify a dealer for getting the $50 rebate or allowance on any cars that were sold to you, true?

A On the birth of the company, no, because they had to have 20 cars.

Q In fact, these dealers were willing to sell to you but not at the prices you wanted to pay, is that right?

A No, it's not right.

Q You had a partner or a business associate named Kuhaneck?

A True.

Q And didn't you tell Mr. Kuhaneck that one or more dealers were willing to sell to General Auto Sales but not at prices as low as you wanted?

A No, sir. I don't believe I ever told him that.

MR. KAPLAN: At this time I would like to offer a previous page from the deposition of Gary Kuhaneck conducted August 29, 1974, beginning at page 67, line 15:

"Q Okay. Now coming to automobiles, did Mr. Bolling or Mr. Strimple or anyone else ever tell you that any new car dealer refused to sell automobiles to General Auto?

"A The only reason they would refuse would be for the low price but you could always go out and buy a car, you know, but I don't think anyone refused that I know of.

"Q And Mr. Bolling and Mr. Strimple didn't tell you that anyone refused?

"A Not to my knowledge that I can recall.

"Q Did Mr. Bolling ever tell you that some new car dealer would not sell at as low a price as General Auto wanted to pay?

"A I believe he did but what dealership I am not familiar with.

"Q Do you know when it was that Mr. Bolling told you this?

"A No, I don't.

"Q Was anyone else present when this conversation took place?

"A I can't recall.

"Q Do you know when it took place?

"A From August to November it could have taken place. I can't pinpoint it.

"Q That was 1967?

"A Yes."

In fact, sir, when you went around to these dealers asking them to sellyou 200 cars you only had five or six orders, true?

A True.

Q The occasion when you encountered or claimed to have encountered Mr. English at Gillogly Chevrolet, the first time, did that encounter take place in the dealership?

A In the conference room upstairs.

Q On that occasion you discussed with Mr. Hamister and the others present this proposal to buy 200 cars or more at $25 to $50 over invoice,true?

A True.

Q On direct you were asked whether there was any discussion on that occasion about Corvettes and you responded that there had not been. Was that true?

A I responded as best as I could remember.

Q As you sit there this afternoon, sir, was there or was there not discussion in that conference room on that occasion on the subject of Corvettes?

A I do not remember whether there was or not.

Q As a matter of fact, Mr. Bolling, didn't you on that occasion tell these gentlemen that you were about to buy or were already buying Corvettes?

A Not that I remember.

Q Mr. Bolling, I'll read to you from the transcript of your testimony before his Honor on October 6, 1976, in the preliminary hearing in this case, page 69, line 18, referring to the occasion in the conference room:

"Q You also had some discussion on that occasion at Gillogly Cheveolet about Corvettes, true?

"A Yes, I believe so.

"Q You said in that meeting that you were buying or about to buy Corvettes, true?

"A True."

Does that refresh your recollection that there was discussion on that occasion about Corvettes?

A Yes. I guess there was.

Q You on that occasion mentioned the price at which you said you could buy those automobiles, the Corvettes, did you not?

A I don't recall whether we did or not. I know the figure $500 sticks in my mind, but I don't know whether it was discussed at that meeting or not.

Q At the time this meeting took place Corvettes were a limited production car, true?

A True.

Q At the time of this conversation Chevrolet dealers could sell all the Corvettes they could get their hands on, true?

A True.

Q And you told the people in this meeting that you could buy these Corvettes for at least $1000 less than the prices that were prevailing in the area, true?

A True.

Q And you had also mentioned that you were going to buy or wanted to buy new Chevrolets for $25 or $50 apiece over cost?

A True.

Q And that all happened at this meeting in the conference room?

A I don't think it happened at this meeting.

THE COURT: That's what he's asking you about.

Q I'll read to you from the transcript of the preliminary hearing, page 69:

"Q On the occasion when you claim you met Mr. Hamister and Mr. English in the conference room at Gillogly Chevrolet you asked Mr. Hamister to sell you 200 new Chevrolets, true?

"A I believe so.

"Q You asked him to sell them to you at $25 to $50 over the manufacturer's invoice price, true?

"A Yes.

"Q You also had some discussion on that occasion at Gillogly Chevrolet about Corvettes, true?

"A Yes. I believe so.

"Q You said in that meeting you were buying or about to buy Corvettes, true?

"A True.

"Q You mentioned the price at which you said you could buy them, correct?

"A I believe so."

Now, sir, from your deposition at page 154 -- this is your testimony -- on August 23, 1976:

"Q On the occasion when you claimed to have met with Mr. English and Mr. Hamister and Mr. Holstead in the conference room at Gillogly Chevrolet there was a discussion about Corvettes, was there not?

"A Yes, I believe there was.

"Q And you told those gentlemen that you were buying or were about to buy Corvettes, 250 or 500 over invoice, true?

"A True.

"Q At the time of that conversation Chevrolet dealers could sell all the Corvettes they could get their hands on for $1500 to $2000 over invoice, isn't that correct?

"A Sure. They did it at Manheim at the auction."

Now, sir, afteryou made those remarks at that meeting about the prices at which you were buying Corvettes and were going to buy Chevrolets, Mr. English made a comment about that, true?

A I don't believe that Mr. English was there. I don't believe this took place at that meeting in the conference room. The quotationsoon'theaamount of cars, amount paid per car, the Impalas and Corvettes, I believe it was discussed with Mr. Holstead on the original telephone call. Then in the meeting in the converence room we were laying the format out for Mr. Hamister when Mr. English entered.

(Continued on next page)

T6 THE COURT: May I have the last answer read, please?

(Answer read.)

Q So, Mr. Bolling, is it now your testimony that the testimony you gave at the hearing on October 6 about the meeting in the conference room which I have just read back was false?

A Mr. Kaplan, that happened seven years ago and I have trouble recalling everything in detail and, as things progressed, as I told you last time, things became more clearer to me, and I thought about it and I believe that it was, because otherwise why would Mr.Hamister talk to us if he didn't have the ramifications of what we were going to propose.

Q Is it your position that you do not now have a present recollection of what happened at any of these meetings and you have here testified on the basis of what may have happened?

A That is not true.

Q The testimony you gave on October 6 at this hearing was not correct, true, the part I read to you?

A No, in part the conversation took place in the conference room about the price fixation on cars, I do not believe this took place with Mr. Holstead.

I believe we did not get to the amount we were going to ask to buy the cars for in the meeting in the conference room.

Q Let me ask you a question of the time. On October 6 you were asked this question and gave this answer:

"Q On the occasion when you claim you met Mr. Hamister and Mr. English in the conference room at Gillogly Chevrolet you asked Mr. Hamister to sell you 200 new Chevrolets, true?

"A I believe so.

"Q You asked him to sell them to you at $25 or $50 over the manufacturer's list price, true?

"A Yes."

That testimony you now say was not correct, is that right?

A I am saying that part about the 200, 250 cars was discussed with Mr. Hamister at that time. The amount per car we had not gotten into because we were interrupted by Mr. English's visit and comments.

Q Is it your testimony you testified on October 6th that you were asked to sell 2t to 50 over the invoice price, you testified falsely, is that right?

A No, I didn't testify falsely. I made an erro on who these prices were quoted to. They were given to Mr. Hamister, and I am sure Mr. Hamister was aware of them prior to the meeting.

Q On October 6th you were asked the following question and gave the following answer:

"Q You said in that meeting that you were buying or about to buy new Corvettes, true?

"A No.

"Q You mentioned the price at which you said you could buy them, correct?

"A I believe so."

Now, the testimony you now say was incorrect, is that accurate?

A I am saying, as I said before, I don't think that the dollar amount per car was ever discussed in that meeting.

Q So the testimony you gave in this court not five weeks ago about mentioning the price at which you could buy Corvettes was inaccurate?

A Well, I believe I made a mistake, yes.

Q The testimony you gave at your deposition in August on this subject was also not correct, true?

A Yes, sir.

Q By the way, Mr. Bolling, did you review your deposition and sign it some time between August and now?

A I believe I did.

Q You signed it before a Notary Public?

A Yes.

Q You swore that the contents were true?

A Yes.

Q You had plenty of time to do all that, true?

A Pardon?

Q You had plenty of time to do all that?

A I don't know if I had plenty of time or not. I received it in the mail and had to sign it in front of a notary and send it back.

Q Right here on September 22, 1976, you swore that the contents of the deposition including what I just read to you was true, did you not?

A Yes, I did.

Q So you were wrong when you gave that testimony under oath, right?

A I made a mistake.

Q And you subsequently swore to the transcript before a Notary?

A Yes.

Q And you were wrong when you testified in this court on October 6th?

A I made a mistake, not of the text of the conversation, but when and who it was given to, in that order.

Q I will read further from your testimony in this court on October 6, page 73, following the discussion about prices at which you were going to buy the Corvettes and Chevrolets.

"Q After you made those statements about the price you were willing to pay Mr. Hamister, Mr. English made a comment about it, true?

"A I believe so, yes.

"Q He told you that you were crazy if you thought you would get cars for thoseprices, isn't that correct?

"A Yes."

The testimony that I just read to you is true?

A Again, I am saying that the price fixation was given to Mr. Hamister on the initial phone call and we had not gotten into the price structure when Mr. English came in the room. Because at that time I had seven orders and Corvettes were being purchased we thought from Dengler Chevrolet, so the dollar amount came and I had not gotten into it with Mr. Hamister.

Q The last piece of testimoney I just read to you that you gave on October 6, that was not correct either, true?

A No, I am saying that -- I am only human, I made an error.

Q Another one?

A It is all related to the same instance.

MR.PERSON: Is there any way he can give his story and then let Mr. Kaplan read whatever he claims without continuing to go on, because Mr. Kaplan has reams and reams of numerous times he asked questions and there may be variations and --

THE COURT: Mr. Person, just end it.

Q After you testified in this court on October 6, 1976, you stayed around a while while Mr. Strimple testified and you heard his testimony, true?

A True.

Q Did you hear any of the other witnesses testify at that hearing?

A I believe I heard the first part of Mr. Maiorana's testimony.

Q After you left the stand after giving the testimony, which I have just read to you, you had a discussion about that testimony with Mr. Person?

A True.

Q And with Mr. Strimple?

A True.

Q And with the Maioranas?

A No.

Q Not with the Maioranas.

It was following those discussions that you now remember that these conversations didn't take place in that conference room, right?

A No, sir.

Q You remembered that before?

A After I returned to Silver Creek, New York.

Q After you returned to Silver Creek was after you talked to Mr. Strimple about your testimony?

A True.

Q After youtalked to Mr. Person about your testimony?

A But there was nothing mentioned about this particular instance.

Q I will show you Defendants' Exhibit Z-6 again, it is your franchise agreement as a master broker. this encounter you claim took place between you and Mr. English took place before you became a master broker for Nabcor, true?

A True.

Q It happened before you signed that exhibit, Defendants' Exhibit Z-6?

A True.

Q That franchise cost you $25,000? That is what you agreed to pay, true?

A True.

Q After you claimed that you couldn't get cars from Nabcor and after you claimed English threatened you, you invested $25,000 in this franchise, is that true?

A True. I might add, we had already agreed to become a master distributor when I talked to English.

Q You hadn't signed any agreement?

A No, we had not signed.

Q You hadn't paid the money?

A That is true.

THE COURT: It is not clear. Did you ask what he personally paid?

MR. KAPLAN: I will go into that.

THE COURT: Talking about the combined payment for the present purposes, is that what you are referring to?

MR. KAPLAN: Yes.

THE COURT: All right.

2 Q You paid whatever it is you paid to Nabcor for these franchises in two installments, right?

A I believe that is correct.

Q The first installment you paid in July, 1967, when you bought your broker franchise, Multi-Make?

A True.

Q That was eventually credited against the $25,000, the cost of the master broker agreement?

A True.

Q Then at the time you bought the master broker franchise, Defendants' Exhibit Z-6, there was a second installment paid?

A True.

Q How much?

A I believe $8000.

Q How much of that $8000 was your money?

A I believe $5000.

Q That $5000 was paid after you claim English threatened you at Gillogly Chevrolet, true?

A Yes, it was.

Q Mr. Person mentioned that you had been asked about the meeting at Gillogly Chevrolet only once.

You were asked at your deposition and at your deposition you initially claimed that Mr. Strimple was with you, not Mr. Kuhaneck, true?

A Yes, I clarified that in my testimony.

Q You were first asked that on direct examination and then on cross-examination you were asked whether you were sure that it was Mr.Strimple who was there that day?

A True.

Q You swore that you were sure it was true that Strimple was with you?

THE COURT: Talking about what occasion?

MR. KAPLAN: The occasion when English was at Gillogly Chevrolet.

THE COURT: What phase of the testimony?

MR. KAPLAN: The deposition cross-examination.

Q First, on direct examination at your deposition you said Strimple was there. Then on cross you said you were sure he was there, true?

A I believe that is correct.

Q And the record shows your deposition was taken August 23rd, this year.

At that time, sir, you knew Mr. Strimple was a plaintiff in this case, true?

A Yes, I believe you told me that.

Q You knew it?

A Yes.

Q You knew that General Auto Sales was a plaintiff in this case, true?

A Yes.

Q And so when you testified that Mr. Strimple was there when Mr. English supposedly threatened you at Gillogly Chevrolet, you knew that Strimple had a financial interest in the outcome of this case?

A True.

Q You knew he had a financial interest in backing up this story that you told about what Mr. English is supposed to have said?

A That is not it. Like I said, over seven years transpired and I tried to forget what happened until you came to Florida and refreshed my memory. From then on --

Q You testified you knew when you testified that Strimple was trying to collect damages in this case, true?

A I knew that after I was told by yourself.

Q You knew before the deposition even began, right?

A True.

Q After you testified at your deposition that you were sure it was Mr. Strimple who was there that day, part of Mr. Strimple's deposition testimony was read to you?

A Yes, I believe it was.

Q In the part that was read to you Mr. Strimple swore that he was not there that day when you talked to English at Gillogly Chevrolet, true?

A True.

Q In fact, in the part read to you you learned that he tetified that he had never been present at any conversation concerning Nabcor where anybody from General Motors was present, true?

A True.

Q And a few minutes later in your deposition you volunteered that you wanted to make a statement?

A True.

Q And the statement you made was that Mr. Strimple wasn't there that day at all?

A That is right.

Q You said it was Mr. Kuhaneck, your former business partner, who was there?

A True.

Q When you said at your deposition it was Kuhaneck who was with you, you didn't know that Mr. Kuhaneck's deposition had already been taken, true?

A That is true.

Q And you thought he would corroborate the story about Mr. English, true?

A No, sir, I didn't expect Mr. Kuhaneck to corroborate anything.

Q Well, from what English told you or what you are now claiming English said was true, if Kuhaneck was there and the man was truthful, you would have thought he would corroborate your story unless your story wasn't true?

A He was never truthful. He never paid his $2500 for his half of the broker either.

MR. KAPLAN: I would like to offer a brief passage from Mr. Kuhaneck's deposition in regard to this, August 19, 1974.

MR. PERSON: Is thisproper to have reading from other depositions when he is conducting a cross-examination of the witness? We will stipulate Mr. Kuhaneck denied he was at the meeting.

THE COURT: I think he can read it.

MR. KAPLAN: Page 71, line 23:

"Q Have you ever met Mr. English?

"A Yes.

"Q How many times?

"A Maybe half a dozen.

"Q Have you ever discussed with Mr. English Na-cor or General Auto or Multi-Make or the brokerage business?

"A Not that I can recall."

Page 75, a question by Mr. Person:

"Q Have you ever heard Mr. English stated that he was terminating any franchise held by a franchised dealer under any circumstances stated?

"A Not that I can recall."

Page 93, line 9:

"Q Did you go to Clements-Gillogly or Hamister-Gillogly with Mr. Bolling?

"A I don't believe so.

"Q Were you and Mr. Bolling ever at any meeting where Mr. English was present?

"A No."

Page 69, line 14:

"Q During the period from October of 1967 until some time in 1968, you were a partner in General

Auto Sales, is that correct?

"A Yes.

Q And you were partners with Mr. Bolling and Mr. Strimple?

"A Right.

"Q Did the business employ any other people besides the three of you?

"A Not that I can recall as far as General Auto. They may have had someone else there, but I wasn't aware of it."

Finally, page 5:

"Q During what period of time did you work for Hamister-Gillogly?

"A I believe 1967, I started in January of that year, to about June or July, I can't recall. The next month I left."

Q By the way, Mr. Bolling, after you claim you encountered Mr. English and had this conversation at Gillogly Chevrolet, you discussed that episode with Mr. Strimple, true?

A Yes, we did.

Q You told him about it?

A Yes, I did.

Q You told him about it, in fact, the very day it happened?

A True.

Q Now, sir, you claim that you own 55 per cent of the stock of General Auto Sales & Leasing,the plaintiff in this case, true?

A True.

Q As a matter of fact, you have had a number of financial reverses over the years, true?

A All related.

Q You claim you invested some money in Nabcor franchises. How much all-told?

A About $30,000 all-told.

Q You lost all of that, you claim?

A Yes, sir.

Q Then you were involved in a Dodge dealership?

A Right.

Q Dan-Knoll Dodge?

A True.

Q As a matter of fact, you said before on direct examination that you were a Dodge dealer.

Isn't what happened that you bought the premises of Dan-Knoll Dodge and Chrysler wouldn't give you the franchise?

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A No, the premises was not for sale. It was leased from a private individual.

Q You leased it from a private individual?

A True.

Q And Chrysler never approved you as a Dodge dealer, true?

A I was approved as a partner, co-dealer with Dan-Knoll, and a Chrysler dealer in my own name was in the process when I got out of it.

Q Didn't you get out of it because Chrysler wouldn't consent to your becoming a sole dealer?

A Chrysler never ever made that known to me. That was one of the reasons why I got out, because I could not get answers from them. When I learned from Dan-Knoll, I was told by Michael Sullivan of the Dodge Department that I would be approved as a dealer.

3 Q But you, sir, personally, were never in fact approved as a Dodge dealer?

A I was never approved as a Dodge dealer of record.

Q You lost $60,000 in that deal?

A Roughly.

Q As a matter of fact, sir, in August when we took your deposition you were unemployed, true?

A True.

Q You regard your testimony in this case as a way of getting some of your money back, isn't that true?

A Not really. That is not true.

Q In fact, at your deposition you testified on August 23, 1976, as follows:

"If someone told me six years ago after that I would be here in trial trying to get back my money, I would call them a damn liar."

That is what you are trying to do here today, Mr. Bolling, get back some money?

A No, sir. As a matter of fact, when you came to Florida you told me it would never go to court.

MR. KAPLAN: No further questions of this witness.

THE COURT: All right. Any redirect examination?

MR. PERSON: Just a little bit, your Honor.

REDIRECT EXAMINATION

BY MR. PERSON:

Q I heard a lot about these seven or eight orders, and were these orders that were placed with Nabcor in Philadelphia the same orders that were taken to various dealerships to try to be filled in Buffalo?

A Yes, sir. If you note the date --

MR. KAPLAN: Excuse me, your Honor. It was just called to my attention, I don't know if any of the other gentlemen had any cross.

MR. WATSON: We certainly do.

THE COURT: Let me hear that last question and answer.

(Record read.)

THE COURT: Mr. Person, it is just starting off on a confused road talking about generalities. If you want to ask him about these orders that were given to particular dealers, but in direct examination you took him around to the dealers, and if I can recall, I asked whether the seven orders were given to Lacks and he said he didn't present them.

I asked whether they were presented to Clements-Gillogly, and he said no.

Now, I think hementioned that Ken-Dengler accepted them and then declined, but all I am saying is when we come back to it let's be precise and not talk about generalities.

But I do think we better give the other

gentlemen an opportunity to cross-examine.

Mr. Runfola, are you going to go first?

MR. RUNFOLA: Yes, please.

THE COURT: Mr. Runfola represents Paul Batt Buick.

CROSS EXAMINATION

BY MR. RUNFOLA:

Q Mr. Bolling, you testified this morning that going back to the order for the Buick Electra with Paul Batt Buick, you testified that came to your knowledge by reason of the fact that you had seen the order at the office of General Auto Sales?

A True.

Q Is that correct?

A Yes.

Q You weren't present when this order was placed, is that also correct?

A That is correct.

Q Do you recall your testimony once again on August 23, 1976, when you gave sworn testimony concerning many of the matters which you were asked about today?

A Yes.

Q Do you recall on that day, and I refer to the testimony, your Honor, commencing at page 80 of Mr. Bolling's deposition, line 16:

"Q Can you recall the Buick Electra order being placed with Paul Batt and how do you know it was placed with Paul Batt?

"A Because I was there when Dale placed the order with them."

Which of those two statements is correct, the statement you made this morning or the one you made August 23?

A I was there when Dale called Paul Batt Buick on the phone that time, I said the original order. I was not there when the customer ordered the car from Dale.

Q Were you present at Paul Batt Buick when the order was made with Paul Batt?

A When placed with Paul Batt, the dealership, no, I was not. I was there when we called Paul Batt and ordered the car.

Q Your contention is the order was placed with Paul Batt Buick by phone?

A I believe the initial contact was by phone and Dale went over there and placed the order with the general manager.

Q Were you present when that order was placed personally by Dale Strimple?

A I was not.

Q In fact, you weren't present when the order was placed?

A When it was physically placed, no, I was not.

Q You also testified this morning, Mr. Bolling, that you maintained an active participation in General Auto Sales & Leasing until about March or April of 1968?

A Yes, I believe so.

Q Do you know whether there were any further sales or orders placed with Paul Batt Buick after that one order of the Buick Electra?

A No, I don't.

Q If you had maintained an active participation in that business, wouldn't you have actually been aware of all orders being placed?

A No, not necessarily.

Q Weren't you there every day?

A No, sir.

Q Hadn't you testified previously that you were with Strimple almost every day/

A Prior to my becoming inactive I was there every day. When we first initiated the operation we were inseparable every day.

Q From October 6, 1967, you were inseparable?

A Yes. From October until somewhere late November or early December.

Q What do you mean by your testimony that you maintained an active participation until March or April?

A I was there intermittently.

Q It was not --

A Mr. Strimple ran the entire operation.

Q You had no knowledge of what orders were being placed or what cars were being received, is that it?

A Not really, no.

Q Do you know whether Mr. Strimple or General Auto Sales & Leasing did in fact place more orders and receive more cars from Paul Batt Buick after the Buick Electra?

A No.

Q You had no knowledge of that?

A I only know of the one instance.

Q Do you know whether another Buick Electra--

THE COURT: He has said he doesn't know. He has said that several times.

Q The order that was placed with Paul Batt for the Buick Electra was placed sometime after that bulletin came out withthe Buffalo Automobile Dealers Association?

A I don't remember the exact date of order or the bulletin.

Q Do you have some recollection as to when the order was placed for the Buick Electra?

THE COURT: All of these facts about dates of orders can be stipulated and the date of the bulletin is shown on its face. I don't think anybody would remember this particularly.

MR. RUNFOLA: I think the difference is that Mr. Bolling has testified --

THE COURT: I have a document now which shows the date of that.

MR. RUNFOLA: Do you stipulate the order was placed in December, 1967?

MR. KAPLAN: We will offer Defendants' Exhibit E at this point, your Honor.

THE COURT: Is there an objection to that? That's the tabulation of sales in the Buffalo area.

MR. PERSON: No, your Honor.

THE COURT: Received.

(Defendants' Exhibit E was received in evidence)

xx

MR. RUNFOLA: It's stipulated, your Honor, that there was one Buick sold on February 22, 1968 --

THE COURT: As I believe the chronology -- we went through this before -- the original order was December 5, 1967. Then there was a reorder, and this is noted on the original exhibit, reordered January 22, 1968. The order was filled February 22, 1968. That's the chronology according to the document I have.

MR. RUNFOLA: You will have to pardon me because I have not been present before.

Q You don't know the date of the original order for that Buick Electra?

A No.

MR. RUNFOLA: May we stipulate it's December 5, 1967 --

THE COURT: I think that's what the record shows. Nobody has suggested anything different.

MR. RUNFOLA: May we also stipulate that the date of the bulletin from the Buffalo Automobile Dealers Association was September 20, 1967, which would predate that order by a couple of months.

No further questions.

THE COURT: Mr. Watson, you may proceed.

CROSS-EXAMINATION

BY MR. WATSON:

Q Mr. Bolling, you have told us before of your experience as a salesman for automobile dealers before you went into the Nabcor business. I ask you is it not correct that since the year 1966 you have been employed by at least nine different automobile dealers?

A Yes, I believe it is.

Q During the same period you had three ventures when you were not working for someone but you were actually in the business either as a Dodge dealer, or General Auto, or for Multi-Make?

A True.

Q And also since 1966 you have been engaged, at least for a period of time, as a salesman in the real estate business; is that correct?

A Pardon?

Q Were you a real estate salesman for a period of time?

A Never.

Q Did you sell condominiums in Florida?

A No, sir. I built them.

Q So since 1966 you have had nine different automobile dealer employers and you have been in three other auto ventures and you built real estate in Florida?

A True.

Q When you and Mr. Strimple informed General Auto you were active in that business for aperiod of time which you did not exceed 90 days; is that correct?

A From October to March would be more than 90 days.

Q I'm talking now of the period when you were active. You did previously testify that you were active for a period of 90 days?

A I believe 90 days would be pretty close to the time I was active.

Q When you ceased being active in that business it was thereafter conducted by Mr. Strimple; is that correct?

A True.

Q So when you were no longer active it was Mr. Strimple who was contacting the dealers and trying to purchase automobiles; is that correct?

A Well, I still had some negotiations but in part he was doing most of the work, yes.

Q You were no longer active. You were now in the business of -- what was it youwere doing?

A Training horses.

Q Did you also sell horses?

A Yes, I did.

Q New or used?

A Good warranty.

To answer that, both.

Q At any rate, I also recall you stated previously today that after a period of 30 or 45 days the business you and Mr. Strimple were conducting was out of money. You ran out of capital?

A That's correct.

Q When you were out of capital you were no longer active in that business?

A That is one of the reasons I became inactive. I decided to leave and my salary was not being paid -- at that time we talked of not taking a salary and I wanted to get out and produce an income to support my family.

Q I merely want to establish that it may have been a period of 30 to 45 days that you were active in that business; is that correct?

A No. I was there about October to

December.

Q But you were out of capital, the business you were conducting, after 45 days?

A That doesn't mean we gave up.

Q Mr. Bolling, you testified at some length here today concerning the meetings you had with Mr. English and I believe Mr. Hamister, Mr. Hamister was an officer of Gillogly Chevrolet?

A Was or was not?

Q He was?

A Yes, sir.

Q Is it correct that after the restaurant confrontation or meeting or conference that you have described, Mr. English was there and Mr. Hamister was present, is it not correct that following that restaurant confrontation you had no further contacts with Gillogly Chevrolet or Richard Holstead of Gillogly Chevrolet or Mr. Hamister of Gillogly Chevrolet?

A I had no further contacts with Mr. Haimster. I bumped into Mr. English a couple of times and I did speak to Mr. Holstead.

Q My question was not directed to Mr. English, sir.

I ask you again, following the restaurant confrontation, is it not correct that you had no further contacts with Gillogly Chevrolet -- I'm talking now of business contacts -- Mr. Richard Holstead of Gillogly Cheveolet, or Mr. Hamister?

A The only other contact that I can remember having with them, I believe I brought a '66 Covette down to Jim O'Donnell to have him appraise it. I had purchased the car from a customer.

Q Other than that you had no further contact after the restaurant confrontation?

A That's true.

Q There has been some reference, sir, to a bulletin issued by the Buffalo Automobile Dealers Association. This is Plaintiffs' Exhibit 310. Do you know that the Buffalo Automobile Dealers Association is the predecessor of the Niagara Frontier Automobile Dealers Association?

A I didn't know that to be a fact.

Q Would you agree that they are? Other than the change of name it's the same association?

THE COURT: We'll assume that. What [illegible] your question?

Q Is it not true, Mr. Bolling, that after the bulletin, which is Exhibit 310, was published, you never talked to any officer of that association about that bulletin?

A After it was published?

Q Yes.

A That's not true.

MR. WATSON: If your Honor please, I would like to read into evidence at this time a portion of a statement given by Mr. Bolling on June 23, 1966 commencing on page 93.

MR. PERSON: What are you reading from? Something prive or personal?

MR. WATSON: This is the interview, your Honor. I don't know the exhibit number.

THE COURT: I don't think it's been marked.

What do you want to read?

MR. WATSON: Page 93.

THE COURT: Go ahead.

MR. WATSON: Page 93, line 8:

"Q You mentioned Mr. DeLacy was president of the Dealers Association, did you personally have any conversation with him?

"A I don't remember.

"Q How about you and/or Nabcor?

"A Honestly, I don't remember. I did, but I'm afraid it was after I became a Dodge dealer. I'm not sure. I don't remember. I don't remember whether it was after I had completely gotten out of it, bought the Dodge agency in East Aurora or after that. I did have a conversation with him, it was at his office at his Dodge dealership in Lancaster, DeLacy Motors.

"Q It was there?

"A Yes.

"Q What was the substance of that?

"A It was just an informal talk, you know, the operation and I don't remember, I can't place it.

"Q Let me ask you this, at that time, were you talking to him as Mr. DeLacy who is somebody you knew or Mr. DeLacy in his capacity as president of the association?

"A Somebody I knew, I would say.

"Q So, he never as president or the association actually conferred with you or forbid you to do anything?

"A I would not say never, not that I can remember.

"Q Not that you can remember, after this --

"A There might have been telephone calls. I might have called him, but like I said --

"Q After this bulletin, from the association, do you recall talking to any officer of the association about that bulletin?

"A There aftain, Dale talked to some people, I know he did, but who or what --

"Q I mean you personally?

"A Not -- not that I can remember personally, see it's hard to remember nine years ago, everything happened."

THE COURT: I think we have to suspend. We'll adjourn to 10 o'clock tomorrow.

(Jury excused)

MR. KAPLAN: Your Honor, there are a couple of matters we have to take up.

THE COURT: Take them up now.

MR. KLEINBARD: Your Honor, we have been served by Mr. Person today with a notice of two additional expert witnesses for the plaintiffs over and abofe the list which was the final list that we had in chambers a week ago, more than a week ago.

THE COURT: I think this whole question of experts -- we are a long way from talking about getting experts.

MR. KLEINBARD: In the first place, I don't see how he could have an expansion of this list over the final list. We are put in this constant position of having to go out and prepare for these witnesses. We cannot afford not to, and at the same time Mr. Person never seems to be limited to any particular list he supplies. I think the point is long past when he could keep adding witnesses.

THE COURT: I have seen the list. I see nothing that's relevant to any state of facts that has been either presented or predicted.

MR. PERSON: May I mark it as an exhibit?

THE COURT: That's that. We are not going to have those, aside from being an expansion of the list which was supposed to be a limitation.

I have indicated heretofore that list on the previous submission, that list of experts, seemed to me to be most extravagant.

MR. PERSON: May I respond a little bit?

THE COURT: Yes.

MR. PERSON: Dr. Lawrence White and Peter Pashigian and Leonard Weiss and Mr. Crandall are all persons I communicated with earlier, a year and a half ago, and in each case they had been unable to testify and as a result I have had to go out and get some additional people.

THE COURT: At the time you submitted your list to us a few days ago, when was the last time you had spoken to these experts?

MR. PERSON: A year and a half ago when lining up witnesses and theneed to present a witness list overnight necessitated my putting down the people I thought I would have as a pool to draw from.

I find I'm unable to draw from any of those people in that pool of four top experts and, as a result, I had to find two other people to replace them, so the four that I have named, White, Pashigian, Crandall and Weiss, are not on my list.

THE COURT: Did you indicate to Paul Weiss that the other list has been reduced by four so this is a net loss of two? I think you better talk this over.

The main thing to me is we can reshuffle but it is a much more serious question, and that's whether there is any relevance at all to any of the topics covered.

MR. KAPLAN: May I address that?

THE COURT: We have had endless discussions about the damage point.

MR. KAPLAN: I don't want to do that but I do want to say one thing: We have had an outstanding list two to three years as to who the experts are and what they're going to say and what the basis is of what they're going to say. That's the first step.

He would have to have in preparing. It surely is the first step anybody has to have in dealing with the question as to whether they would testify at all. If he wants to call anybody I would like to have him compelled to provide that. There is no way we can prepare --

THE COURT: He's giving you the notice. He'll advise you right now after we adjourn of his current situation about the experts, but I think it's very problematic as to whether any of these people will be permitted to testify.

MR. KLEINBARD: In addition that that, we have been served with a subpoena to produce documenst showing our policy during '66 to '70 on making fleet allotments and retail allotments to GM dealers and/or their customers in each of the five car divisions and documents showing the length of time from dealers' receipts of wholesale order to dealers' receipts of car, from '66 to '70 by relevant periods as to each of the five car divisions or parts thereof.

I would like to move to quash this subpoena --

THE COURT: Motion granted.

MR. KLEINBARD: Thank you.

MR. PERSON: Your Honor, I need evidence from General Motors concerning the time periods that it takes for a dealer to obtain a car for Nabcor. I think it's higly critical if we are going to analyze the statistics which you thought were important that we have some basis for understanding what we are looking at. I think General Motors can provide that basis.

Certainly it's difficult to know whether an 80-day delay means anything or not unless we have General Motors explain it, and that's the reason for obtaining, for having them testify, and they have been on the witness list for quite a while, forever, and I think --

THE COURT: I didn't understand how what Mr. Kleinbard read had anything to do with what you are now saying.

MR. PERSON: I requested somebody to appear and produce documents, and I don't need the documents. I really need the testimony more than I need the documents concerning the effect of a fleet allotment and retail allotment in terms of ordering cars and the delays that are expected in the ordinary course of business. I think that will assist us in interpreting the statistics that we are putting together.

MR. KLEINBARD: I don't think that's what the subpoena says, and in second place I feel the time for discovery is long since past. We have been asked to procure certain information for the Court. We are going to give that information to the Court with respect to Nabcor's orders and I can't see at this late stage our --

THE COURT: I can't go into this tonight.

What is so disturbing is to talk about general procedures and experts when the basis elementary facts are coming in in such an astonishing way.

I was under the impression this morning that the witness was claiming that he had trouble getting the seven cars from Nabcor and then to find out this afternoon that they held a deposit from August to November, and -- I don't know whether they ever sent it or never sent it, but to find out that the deposits were not sent to Nabcor and all of this story, I just could hardly believe.

You must know the facts of your case and you put a witness on the stand and it was the cross that brought out the facts which were absolutely night and day different fromthe direct -- so radically different I cannot believe that you would put on a witness on direct with that kind of story. It was totally, completely, misleading. This is what we go through and it's an absolute total waste of the Court's time and it's a waste of the jury's time.

Either you don't know the case or else you are intentionally misleading the Court; it is one or the other. I am somewhat inclined to the latter view, and you must stop it.

MR. PERSON: May I try to explain that I'm trying --

THE COURT: I am very interested in getting the record of this morning's transcript. Maybe I'm dreaming, maybe I was just somehow conjuring up the idea that the witness was saying that he had trouble getting the cars from Nabcor. Maybe it is not there. Maybe somehow I just had a lapse, but I certainly thought he was trying to say that; and, of course, they never had the slightest bit of difficulty getting cars from Nabcor.

The only reason they had trouble getting the cars was that they were "embezzling" the deposit money -- and there is no other word for it -- to hold that from August to November.

You get these witnesses on the stand and you better get them on the stand and have them tell the truth, or there is going to be a lot more trouble than losing this case.

This is all we are going to have today.

MR. PERSON: It's a one-sided conversation. You walk away. You have made up your mind.

(Adjourned to November 15, 1976, at 10 a.m.)

in which a law of the United States authorizes an oath to be administered, that he will testify, declar, depose, or certify truly, and so forth, wilfully and contrary to such oath states or describes any material matter which he does not believe to be true, is guilty of perjury and shall except as otherwise expressly provided by law be fined not more than $2000 or imprisoned not more than five years, or both.

I want to emphasize to everybody present again something which is obvious, but it requires a statement, and that is that the oath taken by a witness is not an idle formality. It is not simply a ticket to the witness stand. It is a very solemn and important obligation, and violation of that oath is a crime which can be punished by imprisonment up to five years and fined up to $2000.

I am directing each attorney in this case, before he puts a witness on the witness stand, to expressly state to that witness that violation of the oath and the making of false testimony is a crime in the terms stated by the statute.

I state that each attorney is directed to do this, and I mean it.

However, I must state, Mr. Person, that

your witnesses have given me the reason for speaking in the terms I have done, or some of these witnesses. I make no bones about that.

My direction goes to every attorney in the case.

No more comment is necessary. The record speaks for itself. Where testimony is true it's true and where it is false it is false. As far as this civil action is concerned, the jury, of course, normally, would be the trier of the issue of credibility. They are still in that role. However, this is not a matter which is divorced from my responsibilities, and I have an obligation and responsibility and a concern to take some measures to see that the processes of this courtroom are not abused, prolonged, and otherwise dealt with in ill fashion by false testimony and false statements.

That's all I have to say about the subject.

MR. PERSON: Your Honor, I wish to make an application, number one, for a mistrial on the grounds that you have interfered with several of the witnesses in terms of their testimony; that is, you have taken over the asking of questions which has resulted in changes of their testimony. Earl Stewart is one example and there are several others.

Also, your Honor, where yesterday I indicated that the record did reflect I was correct, you made a statement in front of the jury to the effect you doubted it, that was prejudicial, I believe.

THE COURT: If there is anything to be corrected, I will correct it immediately.

MR. PERSON: I am concerned that the jury is getting the opinion that --

THE COURT: Nobody is more anxious to correct a mistake than I am. Where is it?

MR. PERSON: I don't have the transcript.

THE COURT: You get it and if there is anything for me to correct I'll correct it immediately.

MR. PERSON: Secondly, I believe you should remove yourself from the action on the grounds you have demonstrated a continuing pre-judging for whatever reason, but you have continually evidenced your belief, and you have announced, that various witnesses of mine of lying.

You called one an embezzler on the stand yesterday where there was absolutely no justification whatever. You have not given me the opportunity to even try to explain these matters. I think --

When he placed that with Nabcor, he did not send that deposit in.

MR. PERSON: But he wasn't under any obligation to do so, your Honor. I don't see why you think he was obliged to. If Nabcor was willing to take orders without deposits, that was a relationship between --

THE COURT: But Nabcor wasn't willing to so do.

MR. PERSON: There is no in-trust funds.

THE COURT: When did he place the order with Nabcor?

MR. PERSON: In November.

THE COURT: He waited four months to place the order, he kept the deposit.

MR. PERSON: There is no trust fund, your Honor. I am concerned about jumping to these conclusions. In other words, you are calling me --

THE COURT: The motions are denied.

MR. PERSON: You called me either incompetent or a liar and I strongly object to that. I believe I am neither, and I do believe you failed to recognize the totally different economic circumstances. You make the assumption throughout the trial that we had the economic ability to obtain all these things that General Motors has, so that a lot of these little minor things that General Motors comes up with are the result of a $5 or a $10 million dollars defense. We haven't had that and it is hurting and you are not looking at it from the standpoint of what our realistic capabilities are in this action.

THE COURT: Well, I think that if you are referring -- I don't know what you are referring to as calling you either incompetent or a liar.

MR. PERSON: Yes, your Honor.

THE COURT: Whatever I had said about your conduct of this trial has been stated on the record and the record will reflect what it reflects.

I could repeat everything that I have said so far, I would stand by it one hundred per cent, and it is confirmed daily as the trial goes on.

There are problems with this case of a very serious nature because the testimony, the statements, the representations, the claims which occupy my time, occupy the jury's time, occupy the time of the defense counsel and, indeed, occupy your time, these things turn out time after time after time to be fallacious, to be grossly exaggerated, to be unsubstantiated.

This has nothing to do with personalities, it has nothing to do with partiality or emotion or anything like that, nothing whatever.

But it has a lot to do with the administration of justice in this court where there are lots and lots of cases which need trial and where the situation is that the trial term in this courtroom is a previous resource and the energy and the expense of legal representation is always a precious resource and should not be wasted.

There has been an immense amount of effort given to this case by the lawyers and a fairly substantial effort given to this case by me, although certainly I haven't spent anything like the time the lawyers have spent, naturally. Even for me there has been a substantial effort and the court machinery is occupied with this case.

Now, it is a legitimate concern to see that we have damage claims made, we have liability claims made, which absolutely evaporate upon scrutiny, and this is a matter of record.

It is not a matter of passion, it is not a matter of judging slight nuances and looking at a witness and seeing whether he is nervous or cool. These are matters which are matters that are documented. They are in black and white and that is what I am referring to.

If I am wrong, you have the record available to you and you can point it out to the proper authorities. But as far as I am concerned, I reject your motions entirely and deny them, and we will proceed with the trial.

The best way to conduct this litigation from here on out, and it is the only lawful way with every witness to get on the stand, tell the truth, the whole truth and nothing but the truth, and if that is done, this case will get down to size.

If it is not done, we are in the position of spending three, four, five, ten times the amount of time on every witness that should be spent because it is very, very cumbersome to have to hear one story on direct examination and then have the other story dragged out through a clumsy -- I don't mean that the course was clumsy, but the process is cumbersome to have it dragged out on cross-examination.

And as far as any partiality, I think you will recall that the same problem which I am now concerned with arose in my view in the testimony of Mr. Stewart, who appeared here not really as a witness for anybody, but I suppose at least prima facie he could be considered to be a witness more disposed to the defense side of the case than to your side. Certainly he was a hostile witness as far as you were concerned.

This man changes his testimony completely backwards and forwards from afternoon to morning to late morning, and I think one of the times when I commented upon the obligations under the oath was in connection with his testimony. Maybe my memory fails me, but certainly his testimony was another clearcut example of somebody who was committing some surprising tricks under oath in this court.

So as far as I am concerned, I am equally appalled by violations of the oath whether it occurs with witnesses favorable to you or favorable to General Motors or favorable to anybody else.

2 MR. PERSON: I don't think my witnesses are lying. I want to make that representation to your Honor, and I think the situation that developed with the Colonial Cadillac incident, the record shows, the exhibit, the log that you have accepted on other

occasions, shows we had about 44 orders placed with Colonial and you jumped to the conclusion that we did not have them merely because the dealer said they can't recall and maybe there were some. I think that is prejudicial. It shows there is a preconceived idea to just disregard anything in our favor and jump to the opposite conclusion.

THE COURT: Really, this is something you can talk about and make your statements and it simply does not represent my state of mind and does not represent any proceedings here, at least I say that, and that is all I have to say. If the record justifies some other conclusion and appellate courts feel differently about it, they will have the record and that will be their responsibility. We will proceed with the trial.

MR. PERSON: Let me just make the two motions, one for a mistrial and one for refusal again in the light of what I have said.

THE COURT: Motions denied.

MR. PERSON: Thank you.

(Jury present.)

THE COURT: Do you have any more cross-examination?

REDIRECT EXAMINATION

BY MR. PERSON:

Q Mr. Bolling, reference was made in Defendants' Exhibit F1, which was a summary of orders in Plaintiffs' Exhibit 450, which is the Nabcor order log to --

THE COURT: You are talking about F1 or F7?

MR. PERSON: You are correct,your Honor.

Q Reference was made to a Cadillac; an order from Multi-Make or General was received by Nabcor on September 18, 1967 for a customer Santon.

Do uou recall whether or not Multi-Make or General ever received a Cadillac from Nabcor for the customer Santon?

A No.

Q You are sure about that?

A Yes.

MR. PERSON: Mr. Kaplan made reference to the log, the Nabcor log, Plaintiffs' Exhibit 450 at page 30050, line 26, which refers to that same transaction, and has alongside it the customer's name, Peter Santon, a serial number for a vehicle 26369E129421.

I would like to point out that in the four lines prior to line 26, namely at line 22, on the same page, there is a vehicle number identical to that except the last two numbers are crossed out and a 73 appears. That shows that the automobile that was on line 22 was a Pontiac Bonneville, and that number for Pontiac preceding the E represents a Pontiac number and not a Cadillac.

So that the entry in the log was obviously a mistaken entry, because we also had an entry in the police book for the precise number, also a Pontiac, and the employee's book number for Nabcor --

THE COURT: I think we ought to reach some stipulation. Can you go over these things, Mr. Kaplan?

MR. PERSON: We will stipulate we never received a Cadillac.

MR. KAPLAN: I will not stipulate to that.

(Mr. Kaplan and Mr. Person conferred)

MR. PERSON: Can we stipulate that we never received a Cadillac of that serial number?

MR. KAPLAN: I can do that.

THE COURT: The problem I have and the jury has is that your recital of those entries in and of itself doesn't convey anything. I don't know whether you are saying that the record shows that the car in question was in fact a Pontiac instead of a Cadillac, and I don't know whether you are saying that the car was received or not received.

MR. PERSON: The Pontiac was received on 11/17[illegible]67 by Nabcor from Al Wilson Pontiac and he is not a Cadillac dealer.

THE COURT: Are you saying the car here should be referred to as a Pontiac and it was never intended to be a Cadillac and that's an error in 450?

MR. PERSON: That the number that was entered for a vehicle on that line 26 should never have been entered on that line and the same number appears elsewhere and it refers to a Pontiac that was bought by Nabcor from Al Wilson Pontiac and sold to Nabcor broker Schultz.

It has nothing at all to do with Multi-Make so Multi-Make never got the Cadillac, according to the logs. That number is a Pontiac vehicle number and not a Cadillac vehicle number.

THE COURT: I've got to have a frame of reference. I have a list on this F7.

MR. PERSON: 398 --

THE COURT: There are eight entries but

two refer to the Schmitt Corvette, so we have seven car orders.

MR. PERSON: Mr. Kaplan said there is a vehicle identification number --

THE COURT: A serial number.

MR. PERSON: In the log. I looked at that number and it was identical to the number appearing four places above. That was a Pontiac transaction.

THE COURT: Is that Pontiac transaction one of the ones listed on this F7?

MR. PERSON: Unrelated.

MR. KAPLAN: Nor are the numbers in the log identical. Part ofthe number is crossed out and another is entered over it.

THE COURT: You can examine the witness about this or you can read entries to the jury and let them draw their conclusions, or you can try to work out some stipulation at the recess.

MR. PERSON: I think he will stipulate that the number appearing in the log opposite the Multi-Make Cadillac order does not belong there, that there is no number that belongs there; isn't that correct?

MR. KAPLAN: No. I don't know what the

fact is. The witness said yesterday he didn't get that car. That's some evidence on the point. I don't know what the facts are.

THE COURT: You'll have to deal with the witness and the records.

MR. PERSON: The number for that Cadillac--

THE COURT: Your contention is that the Cadillac was ordered by Mr. Santon and the order was made to Multi-Make, Mr. Bolling's company and that that order was never filled, the car was never obtained.

MR. PERSON: Either locally in Buffalo or from Nabcor where it was ordered on 9/18/67, according to this log.

THE COURT: You are saying that any indication of any car with a serial number on the line or the entry about the Santon car does not in fact refer to the Santon order?

MR. PERSON: The vehicle number which is entered on that line, the one that Mr. Kaplan referred to in his statement yesterday, is a vehicle number which appears in the Nabcor police book under Nabcor transaction 306. That transaction, with the precise serial number -- and we can stipulate, I hope, that every automobile serial numb er is different -- will you stipulate to that?

MR. KAPLAN: As far as I know, yes.

MR. PERSON: So we have that precise serial number with no variation whatever appearing in the Nabcor police book in an entry bearing lot No. 306, dated 11/17/67, a vehicle purchased from Al Wilson Pontiac, 1968 Pontiac Bonneville, blue, same serial number, and it was entitled from Nabcor to broker Walter Schultz of Trenton, New Jersey, on that same date.

In addition to that, the same number appears four lines above the entry on the log, and that same number refers to another Pontiac that was bought by Mr. Schultz, except in this case the last two numbers are changed from 21 to 73.

That changed number also appears in the Nabcor log under deal 304, serial number 262398E129473.

Those are the only references I can find in the log, in the books, to that serial number, and I'm stating that the books do not show as a result that there was any Cadillac delivered to Multi-Make or General for customer Santon.

THE COURT: All right.

Go ahead with your redirect.

BY MR. PERSON:

Q Mr. Bolling, do you recall approximately when you obtained the Santon order?

A At this time I do not recall.

Q Do you know if you or General attempted to obtain a supplier in Buffalo for that car?

A Yes.

Q Do you recall approximately how long it was?

A To put a time limit on, it's hard. We started from day one until we were financially out of business to establish local suppliers.

Q You can't recall how long you looked to obtain a local supplier for the Cadillac before ordering the car from Nabcor?

A No, sir.

Q That's correct?

A That's correct.

Q Do you know whether the customer ever communicated with Multi-Make or General concerning the order -- and it should be General at this time?

A I believe he did.

Q What did he say?

A I believe Mr. Strimple had dealings with

Mr. Stanton.

Q Do you know whether the customer cancelled the order?

A I believe he did.

Q Do you remember the Casey order?

A No, I do not.

Q Do you remember customer Stachura?

A Yes.

Q Defendants' Exhibit F7 indicates that the order for the Chevrolet was cancelled by General on November 17, 1967. Do you know why that order was cancelled?

MR. KAPLAN: Voir dire.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q Anything you know about why the order was cancelled is something that was told to you by the customer; is that right?

A Yes.

MR. KAPLAN: I object, your Honor.

BY MR. PERSON:

Q Do you know why General cancelled the order with Nabcor?

A General cancelled the order with Nabcor due to the fact that the customer cancelled with General.

Q Exhibit F7 indicates that Nabcor had received the order for this vehicle on November 13, 1967. Just to clarify things, do you recall which company submitted the order to Nabcor? Was it Multi-Make or General?

A General.

Q Do you recall how long General had that order as of November 13, 1967?

A No, I don't.

Q Do you know if the Stachura order was one you acquired while you were with Multi-Make?

A I believe it was.

Q That was prior to October 6?

A Right.

MR. KAPLAN: Your Honor, we called Detroit and we will stipulate that the serial number that was read by Mr. Person was in fact a Pontiac.

THE COURT: Thank you.

Q An exhibit shows that Nabcor had requested a deposit from General concerning four orders, one of them including the Stachura order. Do you recall whether the reason for your communicating with Nabcor to cancel the Stachura order was as a result of the receipt of that letter from Nabcor or not.

MR. KAPLAN: I object to the leading.

(Record read)

MR. KAPLAN: I would object because the exhibit in question shows that Nabcor made the request of Multi-Make and not General.

(Record read)

MR. PERSON: I would like to have a stipulation that during the period after the October 6 agreement we can refer to Multi-Make as General, since General was conducting the activity of Multi-Make.

MR. KAPLAN: That's in issue, your Honor.

THE COURT: I don't think it's a matter of referring to Multi-Make as General. If General did something General did something. If Multi-Make did something, Multi-Make did something. It's a matter of the evidence.

Let's go back to that long question.

(Record read)

THE COURT: I'll allow it.

Your question is: Did Mr. Bolling cancel the Stachura order to Nabcor because of the receipt of the letter asking for a deposit?

MR. PERSON: Yes.

THE COURT: What is the answer?

THE WITNESS: No. That's not the reason. I believe the reason for the cancellation of the order was the delay in receiving the automobile either from local suppliers or from Nabcor.

MR. KAPLAN: I move to strike everything after "No" as unresponsive and incompetent. He is testifying in effect to what somebody told him, unless he maintains it was the delay between November 13 and November 17.

THE COURT: I'll overrule the objection. Motion denied.

Q Do you recall the Morawski order for a Corvette?

A No, I do not.

Q The Morawski order is also referred to in that letter E7 with a request by Nabcor for a deposit of $300. Do you know whether or not your cancellation on November 17, 1967 was made based upon any receipt by Multi-Make or General of this letter E7?

A It was not.

Q Do you know what the reason was?

MR. KAPLAN: I object again, your Honor. It has to be a hearsay answer.

MR. PERSON: This is a business --

MR. KAPLAN: That doesn't mean that the witness can testify as to what people told him.

Q Were you active in the business around November 17, 1967?

A Yes.

Q Did you have knowledge of what orders had been received by General at that time?

A Yes.

Q Did your knowledge include any orders that had been received by General from Multi-Make? Did you also know about any orders received from Multi-Make?

A Yes.

Q Were you aware of any cancellations that had been made by customers up to November 17, 1967?

A Yes.

Q Which company was it that terminated the Stachura, Morawski and Schmitt orders that had been placed with Nabcor?

A General Auto.

Q Do you recall why General Auto terminated the Morawski order?

A After October Multi-Make became part of General Auto Sales and Leasing through a merger of myself and Mr. Strimple.

Q Do you know why on November 17 General cancelled the Morawski order that had been placed with Nabcor for a Corvette?

A At this time I do not remember.

Q There was also a cancellation on that same day, November 17, for the Corvette order for customer Schmitt. Do you recall the circumstances concerning this Schmitt order?

c MR. KAPLAN: I object to the form, your Honor.

Q Can you give whatever information you have about the Schmitt order as of 11/17/67?

MR. KAPLAN: I object to that too.

THE COURT: Let me hear the question.

(Question read)

THE COURT: I don't know what that means.

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rp1 Bolling-redirect

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Q Do you know what ultimately happened to the Schmitt order?

A Yes.

Q Could you state what ultimately happened to it?

A The order was sent -- we received the order from Mr. Schmitt for the 1968 Corvette in I believe August of 1967.

We were able to, attempted to place the order for the 1968 automobiles with Chevrolet dealers and we in fact attempted to set up local suppliers using the order as an attraction for making our commitment with the dealer.

Having trouble with locating local suppliers we then sent the order to Nabcor.

Q The exhibit indicates on 11/13, that is November 13, 1967, Nabcor ordered the car?

A After I made a phone call to Mr. Maiorana explaining the difficulty that we were having setting up local suppliers, and he advised me to send down the orders we had in our possession, and he would do what he could to fill them from the Philadelphia office.

MR. KAPLAN: I move to strike the answer.

THE COURT: Motion denied.

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Q Did he make any request for any deposit at that time?

A He did not.

Q The Exhibit F-7 indicates as a last entry on November 29, 1967, a Corvette was ordered for customer Schmitt, this one having a different order number.

The first order for Schmitt was 456 and the second entry is 469.

Do you recall whether there was a second order for a Corvette for customer Schmitt?

A I don't believe there was. The second entry in the log came as a result of a letter we received from Nabcor's office signed by, I believe, the office manager there, requesting the deposits on certain vehicles. We then forwarded the deposit to Nabcor and the second entry became apparent.

Q You don't really know what the entry was, I gather?

A No.

Q But you don't recall having made any second order for a Corvette for customer Schmitt?

A No.

Q Do you recall the Vosseler Chevrolet order?

A Yes.

MR. PERSON: I would like to offer this.

MR. KAPLAN: I have no objection as to 688 and 689. I don't understand the relevance of 690.

THE COURT: May I see them?

MR. PERSON: I am not offering them at this second. I want to ask something.

Q Exhibit 688, can you identify that, please?

A Yes. It is our Multi-Make order for a sale to Edgar J. Vosseler for a 1968 Chevrolet 6-cylinder Bellaire.

Q This is your signature at the bottom in two places?

A Yes, it is.

Q You obtained this order from the customer?

A Yes.

Q What date did you obtain the order from the customer?

A October 20, 1967.

MR. PERSON: I would like to offer this in evidence. I note that the purchase agreement has the word "Void" on it and underscored.

MR. KAPLAN: No objection.

THE COURT: Received.

xx (Plaintiffs' Exhibit 688 received in evidence.)

Q Did you obtain this order on or about October 20, 1967?

A Yes.

Q Did you attempt to find any sources of supply for the automobile in Buffalo at all?

A Yes, we did.

Q Do you recall approximately how long?

A Again I don't remember the exact length of time.

THE COURT: I am sorry, Mr. Person, but it doesn't mean anything to me at this point, the attempting to find sources of supply.

The question would be did he present this order to a dealer, this specific order to a dealer, and who did he present it to and when, all right?

MR. PERSON: All right.

Q Mr. Bolling, do you recall whether you presented this specific order to any GM dealer in the Buffalo area?

A Not in theBuffalo area, no.

Q Did you present it to any dealer in any area?

A Ken-Dengler Chevrolet.

Q How many miles is that from Buffalo?

A Between 65 and 85 miles.

Q What happened, did the dealer accept the order?

A Yes, he did.

Q Subsequently was the order returned to you?

A Yes, it was.

Q About how long after?

A Within two days from the time we placed the order with Mr. Dengler.

Q Do you recall ny other dealers to whom this Vosseler order was presented whether or not it is 65 miles or more away from Buffalo?

A I believe the orders were presented to Bob Bain Chevrolet.

MR. KAPLAN: May I have a voir dire?

VOIR DIRE

EXAMINATION BY MR. KAPLAN:

Q Did you present it to Bob Bain?

A No, I did not.

MR. KAPLAN: Objection and move to strike.

THE COURT: It is stricken.

Q Did you on and after October 20, 1967 -- were you seeking to establish sources of supply in the Buffalo area for Chevrolets?

A Yes, we were.

Q Did you carry this order for the Vosseler Chevrolet on your person at any time you visited any dealer in the area?

A Yes, we did.

Q You visited Chevrolet dealers in the area with orders.

Q Did there come a time at which you could not obtain cars from Chevrolet dealers in the Buffalo area, including the outlying areas?

A Yes, there did, and that is when we sent orders off to Nabcor.

Q Exhibit F-7 indicates on November 13, 1967, the order was sent to Nabcor and the exhibit shows, Exhibit F-7 indicates that this automobile was delivered, is that correct? Was the car delivered?

A Yes, sir.

Q To General for a customer Vosseler?

A Correct.

Q Do you recall approximately when the delivery took place?

A No, I don't. It was quite a while. I don't remember the exact date or time.

Q There is an entry in the log, in fact two entries with respect to that vehicle.

This is the police book, the Nabcor police book. Entry No. 380 and also No. 390 states that on February 26, 1968, Rohrer Chevrolet sold vehicle No., last five digits, 93060, to Edward Vosseler, and that the term -- I am sorry, that Nabcor purchased the car from Rohrer Chevrolet on February 26, 1968, and on the same date transferred title to Mr. Vosseler in West Seneca,New York. That is entry No. 380 in the Nabcor police book.

Entry No. 390 in the Nabcor police book indicates the same transaction with the same motor vehicle number, Chevrolet, except that the person to whom Nabcor transferred title was General Auto Sales.

I point out that the length of time from October 20, 1967, receipt of the order by Mr. Bolling on behalf of either Multi-Make or General, to the date of delivery to the customer, was 139 days.

MR. KAPLAN: That is a little misleading.

THE COURT: What is the date of delivery?

MR. PERSON: 2/26/68.

Q Do you recall the customer Chambers?

A Yes, I do.

Q Is that Chambers with an "S" or a "C" at the beginning?

A It is "C."

Q Do you recall whether he ordered a Chevrolet from you?

A Yes, I do.

Q Do you recall whether he ever obtained that car?

A I don't believe he did. I believe the order was cancelled.

Q Cancelled by whom?

A By Mr. Chambers.

Q Is a delivery of 139 days from the time the customer makes an order for a car to the time he received the order an acceptable period of time in your automobile business?

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q Have you sold -- how many --

THE COURT: I will overrule it, so long as the jury understands there are various reasons for the delay, depending on what you are talking about, the first so many days and the second so many days.

You are asking this vis-a-vis between General or Multi-Make and its customer?

MR. PERSON: Correct, your Honor.

THE COURT: All right.

Q With respect to the relationship with a customer having an order with a person selling cars, is a 139-day delay an acceptable delay for the business?

A I would say no.

2 Q You did lose other orders as a result of delays, is that correct?

A That is correct.

Q Do you recall approximately when General ran out of funds?

MR. KAPLAN: I object, your Honor.

THE COURT: Sustained. It has been asked and answered before, unless you want it for revision.

I will overrule the objection.

Q Do you recall when General ran out of funds?

A It was a short time after we became General Auto Sales & Leasing.

THE COURT: What do you mean by a short time?

THE WITNESS: I would say a period of 60 days, 90 at the outside.

Q Did this shortage of funds have any effect upon your relationship with General?

A Yes, it was one of the reasons why I became inactive.

Q Inactive is the lastword? Can you speak up a little bit?

A One of the reasons of my leaving General was, first of all, to reduce the payroll by my salary and cut down on expenses and also to work in another business that I was engaged in.

Q Prior to the time that General ran out of funds, was General selling franchises, is that correct?

A Yes, we were.

Q Did General ever stop selling franchises?

A Yes.

Q Or did General ever stop attempting to sell franchises?

A Yes, we did.

Q When did this occur?

A Again at the time that we ran out of working capital.

Q Is it fair to say that at the time you ran out of working capital you had insufficient funds to carry out the purposes of the business?

A Yes, it is.

Q You mentioned previously that cars were picked up in Philadelphia or Jenkintown and delivered to Buffalo. Do you recall that?

A Yes, I do.

Q Was this an acceptable way for Multi-Make or General to obtain new automobiles for its customers?

MR. KAPLAN: Your Honor, I do object at this point. This wasn't gone into on cross and there was a full opportunity on direct.

THE COURT: Overruled.

A Could I have the question again?

(Question read.)

A Under the provisions of the agreement we signed they would supply us from Nabcor.

Q Was the method of delivery one that would have been acceptable over a long period of time?

A No, it would not. The method didn't enhance the sale of the automobile to a customer for the mere fact that we had to personally transport the cars from Jenkintown to Buffalo. Therefore, when the car reached Buffalo it had several hundred miles on it.

THE COURT: May I have the question and answer?

(Record read.)

A I might add also it increased our expense by having to send somebody to Jenkintown and have them drive the car back to Buffalo.

Q Was there any procedure which would have been acceptable in the long run involving purchases through Nabcor?

MR. KAPLAN: Can I hear the question again?

(Question read.)

A The only one, two, that I could think of would be either Nabcor or General Auto Sales setting up local sources of supply in our working area or making available arrangements for drop-shipment of cars into that area, therefore eliminating the miles on the automobile and giving the customer who purchased the new car the feeling they bought something used because it did have miles on it.

Q Would this have required the cooperation and agreement of local franchised dealers?

MR. KAPLAN: I object to that, really.

A Yes.

MR. PERSON: I don't know what you are

objecting to.

MR. KAPLAN: Among other things, I don't know what the local dealer had to do with drop-shipments necessarily.

Q Could you explain what you mean by drop-shipments?

THE COURT: May I have the last few questions and answers?

(Record read.)

THE COURT: Go ahead.

A Yes. We would place the orders with Nabcor and Nabcor would in turn go to a dealer in the Jenkintown area, order the automobile. The order would be sent to the factory and with arrangements made for the car to be delivered to us at a respective dealer in the Buffalo area.

Q Turning to something else, you have given some testimony about the value of papers, records of General Auto, and I think you testified that there was -- I believe you testified there was no monetary value to the papers.

Was there any other kind of value those papers had?

A The only other value they would be to any-he was the used car manager for Clements-Gillogly Cheveolet.

Q Did you ever have any discussion with him concerning Mr. Kuhaneck?

A Mr. Kuhaneck and I both worked for Clements-Gillogly Chevrolet when Mr. O'Donnell was used car manager.

Q Do you know what Mr. Kuhaneck is doing now?

A I believe he's in some kind of industrial cleaning or something to that effect.

Q His own business?

A Yes, sir.

MR. PERSON: No further questions.

THE COURT: Any recross?

MR. KAPLAN: Briefly, your Honor.

RECROSS EXAMINATION

BY MR. KAPLAN:

Q You testified a few minutes ago, Mr. Bolling, that you thought that this car for Mr. Chambers was not delivered. Is that your testimony today?

A Yes.

MR. KAPLAN: I read to you from the transcript of yesterday's testimony, at page 2263:

"Q Mr. Bolling, Nabcor delivered to you the car for Mr. Chambers, right?

"A Delivered to General Auto Sales, yes."

THE COURT: What were you saying when you testified this morning? Were you speaking of Nabcor's delivery to Multi-Make or Multi-Make's delivery to Chambers?

THE WITNESS: Nabcor's delivery to Multi-Make is what I thought he asked me.

THE COURT: What were you saying this morning? Were you talking about your delivery to Chambers? Do you get my point? What was not delivered that you said this morning?

THE WITNESS: I thought Mr. Person asked me if the car for Chambers was delivered to Multi-Make, and the car was not delivered to Multi-Make, no.

Q It was delivered to Mr. Chambers, however, true?

A I believe so, yes.

Q No doubt about that?

A I don't remember all the cars that were delivered and cancelled, but I believe the car was delivered to Mr. Chambers but it was never delivered to Multi-Make Auto Sales.

Q You testified that this process of having cars driven from Philadelphia to Buffalo by Nabcor would not have been acceptable, true?

A Yes, sir.

Q When you first bought the Multi-Make franchise you were supposed to get all of your cars from Nabcor in Philadelphia?

A Yes.

Q You knew that when you signed up and paid $5000 for the first franchise, true?

A Yes. However, in the initial purchase of the franchise Mr. Nash had advised us that the ramifications of becoming a master distributor -- had I heard this part of it I probably would not have entered into the broker agreement with Nabcor without another step to make, to procure the cars locally.

Q So in your discussions with Nash in July of 1967 you talked about becoming a master distributor, is that your testimony?

A Yes, it is.

Q But you didn't buy a master broker franchise at that time, right?

A They were not available. As Mr. Nash

explained it to us, they were not available to an individual unless they were brokers. You had to be a broker first and then the next step was a master distributor.

Q Nash told you you could not become a master broker without first being a broker?

A I don't know whether he stated it in those exact words, but the breakdown was master, master distributor.

Q He told you, in substance, you had to be a broker first?

A True.

Q In 1968 you became affiliated with this Don Knoll or Dan Knoll Dodge?

A Yes.

Q How long were you there?

A December of '69, I believe.

Q When did you first go there in '68? Was that right after you were with General Auto Sales?

A No, sir, it was not.

Q How long after you left your active part in the General Auto Sales business did you go to Dan Knoll Dodge?

A At this time I can't remember the exact date.

Q Do the best you can. Approximately when?

A August of '68, July of '68.

Q Between the time you left General and the time you went to Dan Knoll Dodge, what were you doing?

A I was raising and training and showing registered horses.

Q Was this a successful business?

A Yes, it was pretty successful.

Q Did you make a lot of money at it?

A Not a lot of money.

Q Did you make $60,000 at it?

A No, I did not.

Q You left General Auto Sales because it was out of money, true?

A Yes.

Q In August of '68 you went to Dan Knoll Dodge?

A Yes.

Q You lost $60,000 in Dan Knoll Dodge?

A Yes, sir.

Q Where did it come from?

A Liberty National Bank.

Q You borrowed it?

A Yes.

Q On your credit?

A Yes, sir.

Q You could have done the same thing for General, true?

A I don't believe so.

MR. KAPLAN: No further questions.

THE COURT: Anything else?

MR. PERSON: No further questions.

THE COURT: You may step down.

(Witness excused)

THE COURT; Call your next witness.

MR. PERSON: Mr. Dale Strimple.

DALE D. STRIMPLE, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PERSON:

Q Where do you live, Mr. Strimple?

A 1583 Sand Ridge Road, Alden, New York, zip code 14004.

Q You are a plaintiff in this section?

A Yes, I am.

A Yes.

Q Could you tell us what it was?

A I started in the automobile business back in 1947 or '48 and for a period of 15 to 17 years I was the general manager for Main Transit Motors. Previous to that I was the sales manager for Parks Oldsmobile,which was a General Motors dealer, and I had also run my own used car lot for several years. So I roughly had a good 20 to 25 years automobile experience.

Q How didyou find out about the Nabcor franchise?

A Through a newspaper article.

Q You responded by calling somebody?

A Yes, I did.

Q Whom did you talk with?

A I think it was Bill Nash.

Q Did you meet with Bill Nash?

A Yes. Ultimately I had a meeting with Nash, decided to become a broker, monies were exchanged and we signed an agreement.

Q What was the purchase price for your franchise back in July of 1967?

A He was asking $5000.

Q Did you pay him any money?

A Yes, I did. I think I ended up paying him at that time, or within a few days period, something like $3500 in cash.

Q You became a Nabcor franchisee at that time?

A Yes.

THE COURT: Did you give him a note or agree to pay any more than the 3500?

THE WITNESS: I believe ht took a note, but I'm not sure of the whole terminology, of the whole thing, in the end, because we were paying so much in cash and at a later date --

Q What was the name of your Nabcor franchise? Under what name were you a Nabcor franchisee at the commencement of activities as a franchisee?

A When I first took it, I took it under my own name, Dale Strimple, and then I decided to take the company name which we later incorporated: We called ourselves General Auto Sales.

Q And Leasing, Inc.? That's the correct name?

A Yes. Inc. This is when we actually incorporated.

Q Did you set up an office?

A Yes, we did.

Q How long after you signed the franchise agreement back in July of '67?

A Well, in the few weeks interval from the time of obtaining the franchise I had been investigating the location at 5247 Broadway, which was run by a fellow by the name of James Piccione, and at the same period of time I saw a full page ad in the Penny Saver which stated all makes and models of automobiles available to be bought, and it turned out to be Mr. Bolling's ad, which I called him and we became acquainted at this point.

Q Is this prior to your setting up an office?

A I had the use of an office. You are talking about setting up --

Q Did you commence activities as a Nabcor franchisee prior to your dealings with Mr. Bolling?

A Yes and no. I did not become tremendously active in this first couple of weeks.

Q Will you state what you did?

A I approached different people, one of them being Mr. Piccione, who had the facilities at 5247 Broadway, and I told him I had become a broker for Nabcor selling all types and models of new automobiles and inquired as to the use of the facilities, the showroom and carlot and everything, to actively start a viable operation.

Q Did you attempt to solicit any orders before the date of October 6, 1967 agreement with Mr. Bolling?

A Yes. I talked to different people that I knew. I set up several chains of communication such as we call them "bird dogs" in the automobile business, people that are acquainted with a lot of other people starting to bring in information as to who might be interested in a car, and this sort of thing.

Q Do you recall approximately when you started trying to obtain orders for new cars in your original operation?

A When I started to try to obtain actual -- are you talking -- repeat the question.

Q I'm trying to find out, maybe you can tell us directly without a lot of these questions, what did you do -- before you and Don Bolling joined each other -- in order to try to get some car orders, and how many orders did you get?

MR. KAPLAN: I object to the form because

You can be as patient as you want, but let's get it. Get the chronology and pin it down to dates because it is becoming very, very important.

(In open court.)

BY MR. PERSON:

Q Mr. Strimple, prior to October 6, 1967, did you have any activities at all together at all with Mr. Bolling over in his Union Road place of business?

THE COURT: Let me just interrupt. I think you told us that the first thing you did after you became a broker was to look for the location and talk to Mr. Piccione?

THE WITNESS: Yes.

EXAMINATION

BY THE COURT:

Q Then you described you did some painting, fixing up, right?

A Yes.

Q You said this took you into August, 1967, right?

A Yes.

Q Did there come a time when you finished doing whatever painting and so forth?

A Yes.

Q That was in August?

A Around that time.

Q Let's just take the time up to finishing the painting. Had you done anything by that time to try to get orders for cars from customers?

A I started -- as I mentioned before, several individuals that were very knowledgeable and very well known, in telling them that I was selling all makes and models of automobiles. Jimmy Piccione was one of them, who, as I said, ran the facility on Broadway, so that we had quite a few different contacts with a lot of different people, and my approach was --

BY MR. PERSON:

Q Excuse me just a second, please. I think we have the same problem now. You say "we" and I believe that you may be referring to you and Mr. Bolling at this time. Is that so?

A No. That was Mr.Piccione.

THE COURT: You are now talking about the time before you met Mr. Bolling?

THE WITNESS: Right.

THE COURT: That is what I am asking you about.

THE WITNESS: Right.

THE COURT: Because I assume that you -- well, I just took your testimony, you talked that you were painting and that was a convenient reference point.

THE WITNESS: It takes a while to get a facility ready to move into.

THE COURT: Hadyou joined up with Mr. Bolling at all before you finished the painting?

THE WITNESS: No.

THE COURT: All right, I think it is clear.

Go ahead, Mr. Person.

BY MR. PERSON:

Q Did you have any other activities prior to your communications with Mr. Bolling concerning your gathering of orders?

A Yes, as I said, I set up quite a few different people, let them know personally that I was in the business.

I was well known in the automotive business because, like I said, I had been in it 20, 25 years. A lot of people knew that I sold cars.

Q How many so-called "bird dogs" did you set up prior to your communication with Mr. Bolling?

A I had contacted at least eight or ten different people that would start funneling potential customers to me.

Q Is this before your office was ready?

A Right. I had already had a tentative agreement with Piccione to take the facilities.

Q Did you have a letterhead?

A I don't know if we had it in writing. I knew him for many years.

Q Did you have business stationery at that time?

A I don't understand.

Q Did you have any printed stationery indicating any address at all for your new business prior to the time that your facilities were ready?

A I know I took and had printed stationery with our address on it. I don't know if it occurred right in that few days I was doing this.

Q Did you have a mailing list to try to obtain customers?

A I made telephone calls. Shelton Wills was one person who I set up and who referred people in to me.

Jim Piccione.

Clark.

George DeGaulle.

I can name a dozen of them that I contacted personally that were well known, to start sending in people that were interested in buying automobiles.

THE COURT: Did they send people in?

THE WITNESS: Yes, they did.

THE COURT: During this time did you receive any orders for cars? And this is the time up through the painting.

THE COURT: During that period of time my daughter placed an order with me for a car. I had two or three other people. I had a fellow that was referred to me by Wills for a Pontiac. I had four or five automobile orders, either verbally or written that was placed with me in these few days or a couple of weeks at thisparticular time.

MR. PERSON: I have Exhibit 691 before me.

MR. KAPLAN: No objection.

THE COURT: It will be received.

MR. PERSON: I have not offered it yet,

your Honor.

Q Have you seen this before?

A I think this was the first order I ever wrote for Nabcor.

Q Who was this order for, by the way?

A That was for my daughter.

Q Look at the date on that.

A September '67.

Q September 21, '67?

A Yes.

Q You said this was the first one you had written?

A Right. I think that was right in this period of time that I actually started --

Oh, the reason, if I might state, your Honor, why there was not any orders actually written prior to this is that it was in between this July and October, which was a model change. It would have been a great injustice to any of my customers to write orders on '67 cars when the '68 would be in in a few weeks, and technically that '67 car would be a year old.

Q Are you saying there is a difference in what you are testifying to between an order you had taken and a written order?

A Yes.

Q When you were telling us before you had taken in orders during the period prior to the completion of the painting, what type of order were you referring to?

A If somebody came in and said "Dale, I want to get such and such a Chevrolet, and as soon as the new models come in this is what I want," I would consider that an order.

Q How many of that kind of order did you get prior to the completion of the painting?

A Five or six. Somewhere in that vicinity.

Q When did you meet Don Bolling? Can you give me an approximate date? The date of your agreement with him is October 6, 1967. I don't know if that's of any help.

A I believe I met Mr. Bolling in late August, somewhere in that time.

Mr. Kaplan would know probably exactly if the date was important.

MR. PERSON: So true.

THE COURT: You are the witness.

A Somewhere relatively close inthat period of time.

Q From the time you got your Nabcor franchise, your original franchise, until this time you met Mr. Bolling, can you approximate the njmber of orders that you had taken but not written?

A I had somewhere between, as I said, five or six, with a lot of "if" type of things. A lot of people were talking that they would be buying automobiles from me.

Q In addition to the orders you were referring to?

A Besides the actual commitments.

MR. KAPLAN: I move to strike what people were telling him.

THE COURT: Motion denied.

Q Could you describe your discussions with Mr. Bolling?

MR. KAPLAN: I object to that, your Honor. Hearsay.

THE COURT: I think the fact of the discussions, these wouldnot be taken for the truth of the narrative stated if Mr. Bolling gave a lot of narrative facts. It is not received for that. But I think the fact of the conversation simply goes to

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transactions; those are facts in and of themselves.

Overruled.

Let's see what happens.

Q Describe your communications with Mr. Bolling prior to October 6, 1967.

A I called Mr. Bolling on the telephone. As I said, I found out he was also a Nabcor broker, and we set up a meeting time, and we talked about the whole Nabcor system, the possibilities of what could be done in mass merchandising and this sort of thing, and it ultimately led to the forming of General Auto Sales & Leading, Inc.

Mr. Bolling had had tremendous response from --

MR. KAPLAN: Objection, and I move to strike.

THE COURT: I'll strike that.

Q He had a response, you were saying --

THE COURT: I've stricken that. He testified as to what orders he got and so forth.

Q Did there come a time in which you and Mr. Bolling engaged in business activities together in his Union Road office prior to October 6, 1967?

A I was in and out of the Union office

while we were awaiting everything to be finished and done in the Broadway office.

Q Were you and Mr. Bolling working together in a business way in anticipation of the agreement between the two of you?

A We were working toward an actual written agreement to combine our two places.

Q Were you conducting your activities together?

A He and I were out calling on prospective brokers.

Q Prior to this time, how many orders did you obtain, yourself, without Mr. Bolling's presence or assistance?

A I said I had roughly somewhere between five and six, somewhere in there.

Q What date was this--

MR. KAPLAN: Now that Mr. Person is asking about orders, I ask that we distinguish between written orders and chit-chat.

THE COURT: No, no. Please.

Q About what date was this, Mr. Strimple, that you and Mr. Bolling started business activities together with each other in his Union Road office?

THE COURT: This is jumping a little fast for [illegible].

You say you were in and out of his office?

A Yes. I would drive down and see if I could find a parking space. He had so many cars around looking -- you could not find a place to get in . I wanted to try to talk to him.

THE COURT: Try to talk to him about what?

THE WITNESS: About our business. We were talking about combining two territories.

In other words, I had a certain territory that was involved, that I was expected to cover. It was not exclusive but you cover a sphere of influence, so to speak, and he had the West Seneca area, this sort of thing to cover, the sphere of influence.

THE COURT: I think what Mr. Person asked you: Did there come a time when you reached an agreement?

THE COURT: Yes.

Are you talking of a verbal agreement or a written agreement between Mr. Bolling and myself of what we were going to do?

THE COURT: Did there come a time when you reached an agreement between you as to doing business together?

THE WITNESS: Yes. I think we reached a mutual understanding, I think, sometime in September.

THE COURT: When in Septemger?

THE WITNESS: I really don't pinpoint the time down that close,your Honor. It's the same period of time that we had been in touch with Mr. Maiorana and we were in the discussion stage of what a master distributor would do, in that same period of time.

THE COURT: Was this before you reached your understanding together?

THE WITNESS: It was right in the same period of time. It was a very small time differential in this thing.

THE COURT: Did there come a time when you reached an agreement to go into business together?

THE WITNESS: Yes.

THE COURT: Speaking in very general terms, I mean.

THE WITNESS: Yes, we did.

THE COURT: What had you agreed upon when you reached that agreement?

THE WITNESS: We had agreed that we would merge our territories and our brokerages that Don would give up the office on Union Road and we would move into the Broadway facilities.

THE COURT: Had you reached an agreement that you would attempt to get a master distributorship or was that something later?

THE WITNESS: We were in the discussion stage. I don't know if we actually reached an agreement. I think we reached an agreement that we were going to try to get one, something like that.

THE COURT: The written agreement for the master distributorship is dated October 6, 1967?

THE WITNESS: Right.

THE COURT: Would you be able to say how long before that you and Mr. Bolling had reached the agreement to do business together?

THE WITNESS: It would have to be at least a month, three or four weeks in there. Three to four weeks.

THE COURT: You may continue, Mr. Person.

MR. KAPLAN: A couple of questions on voir dire.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

xx (Defendants' Exhibit HHHH received in evidence.)

MR. KAPLAN: The certificate of incorporation I have is October 23, 1967, and filed with the Department of State of the State of New York on November 10, 1967.

THE COURT: Mr. Person, go ahead.

MR. KAPLAN: May we have a ruling on my motion?

THE COURT: Denied.

Q During the period before -- was it a two or three-week period approximately before October 6, 1967, that you and Mr. Bolling worked together in Nabcor related matters?

THE COURT: Wait a minute. He has said they reached the understanding. Just take it from there and ask him what happened.

Q What did you and Mr.Bolling do, if anything, after you reached this oral understanding up to October 6, 1967?

A Well,we met on several different instances to take and analyze what mass distribution would mean in the automobile field, which was a fascinating type of idea to me.

Q No asides like that, but just try to state what it is that the two of you did prior to October 6, 1967.

A We met, discussed the approaches of what we could do to work a mass distribution. Talked about advertising, talked to prospective brokers, ran some ads in some of the different papers asking for brokers because after we decided that we were going to get the master broker, then the whole thing was set with the idea of mass merchandising.

THE COURT: Mr. Person's question is, I think, what did you do between the time of the oral understanding or whatever understanding it was that you talked about a few minutes ago, and October 6 when you signed the master distribution agreement?

Isn't that your question?

MR.PERSON: Correct, your Honor.

THE COURT: Let's keep that in mind and see if you can remember what you did during that specific time period.

THE WITNESS: It had to be that I was checking different dealers for sources of supply and going to financial institutions to discuss financing in this sort of thing, because this is indicative in the automobile business.

MR. KAPLAN: Excuse me. Your Honor, the witness said it had to be. I would like to inquire on voir dire whether you specifically remember, Mr. Strimple, doing those things in that time period?

THE COURT: The voir dire is becoming like a cross. Now I don't think that is --

THE WITNESS: Your Honor, how can I remember eight years back the week in which I went on something?

THE COURT: Mr. Strimple, let me just say that what Mr. Person is asking you about is your memory, not assumptions.

THE WITNESS: I definitely did these things, yes.

THE COURT: Not had to be or anything like that.

THE WITNESS: I definitely did go to inquire about financing and sources of supply.

BY MR. PERSON:

Q Did you go with Mr.Bolling?

THE COURT: Wait a minute.

MR. PERSON: I am sorry, your Honor.

THE COURT: The question was before October 6, 1967, and if you have a memory, state it. If you don't remember it and can't place the time of these things, say that.

The question is what is your memory? Do you remember anything you specifically did before Octoner 6, 1967, or don't you remember the time you did things?

THE WITNESS: I am sorry, your Honor, I don't remember the date, whether it was October 6 or October 10.

BY MR. PERSON:

Q Do you recall anything befor October 6th that you and Mr. Bolling did after you reached an informal agreement?

A I know that specifically I went into Clements-Gillogly to try to get a source of supply of a few cars in this period of time.

Q Were you a master distributor or not at that time?

A No, but it was decided that we were going to become one.

Q Can you recall anything else?

A No, outside of the fact I was refused.

Q Did you have two offices at this time?

That is, did you have one office and Mr. Bolling have another prior to October 6th?

A Yes, at the particular time there was two of them.

Q Were you going to one or both of these offices prior to October 6th?

A We dropped into both of them.

Q Was the same true of Mr. Bolling?

A Yes.

Q Do you recall any efforts prior to October 6th in attempting to generate any additional orders by the two of you or for the benefit of the two of you?

A At this period of time I mean there were several dealers that we approached.

Q Be specific now, before October 6, 1967, if you can, please.

A I really can't pinpoint the date, your Honor, to be truthful.

THE COURT: Look, you have to testify the way you remember it. Now, what is the time period you are talking about?

What is it that you are speaking of? Is it the period in the Fall of 1967 or is it October or November or is it September, or aren't you sure?

THE WITNESS: The Fall of 1967.

THE COURT: When you say this period of time, you are speaking of the Fall of 1967?

THE WITNESS: Right. You are talking between three or four weeks' period of time there when all kinds of things happened.

THE COURT: What is the three or four weeks?

THE WITNESS: Right between the middle of September and probably middle of November, some time in there.

Q Do you mean October or November?

A I don't know if it was October or November.

Q Were you and Mr. Bolling able to obtain any additional orders at all prior to October 6, 1967?

A Mr. Bolling had continual inquiries from his advertising and he was writing orders or taking verbal orders.

I mean, we were very impressed with the amount of business that we were generating totally.

He was, by the way, handling the retail end of the automobile business.

Q Do you mean for the two of you Mr. Bolling was to be handling the detail end when it got into General and that before the October 6, 1967, agreement, whatever arrangement you had between the two of you he was handling the retail end, too, is that correct?

A He was going to handle the automotive retail and I was going to handle the franchising.

Q Did you attempt any offering of franchises before October 6, 1967?

A Well, when you say offered it, we discussed it with people who evidenced an interest.

Q Before the date of that agreement?

A Yes. I mean, we had negotiated with Mr. Maiorana for a couple of weeks at least, talking about what we were going to do and we turned around and had agreed between ourselves that we were going to do it and we started to talk to anybody that we thought might be interested in setting franchises.

2 Q About how many persons by October 6, 1967, about how many people did you have as persons interested in purchasing franchises from General?

A About October 6?

Q Yes.

A I don't know if we had one or any as of October 6th in this interim period that we are discussing without pinpointing it right down to the date. There were quite a few.

Q You had made no commitments by this time, is that correct? You hadn't accepted any or made agreements with people to buy a franchise?

A No, we had just -- to find them, talk to them, approach if they were interested, what they thought of the entire concept.

Q You mentioned the Clements-Gillogly Chevrolet as a place that you visited prior to October 6, 1967, is that correct?

A To the best of my recollection, it is.

Q Could you describe who, would you state who you spoke with?

A Could you repeat the question?

Q Who did you speak with at Clements-Gillogly at this time?

A I believe it was Dick Holstead.

Q Was this in person or by phone?

A I believe it was by phone.

Do you know whether it was in your office or Mr. Bolling's office?

A No, I don't.

Q Did you offer Clements-Gillogly any orders to be filled for General?

A I had --

MR. KAPLAN: Your Honor, I object for one reason and one reason alone, and that is we were supposed to have it pinpointed before October 6 and there wasn't any General, as I understand the testimony.

THE COURT: Let's rephrase it.

Q In whose name did you do business after you acquired the initial franchise?

A I accepted the name General Auto.

THE COURT: You are talking about after Mr. Strimple got his original franchise in July, aren't you asking about that?

MR. PERSON: Yes.

THE COURT: He said he did business in the name Dale Strimple.

THE WITNESS: Right, and then a few days following this my son picked up the name General and we went to General and later became incorporated.

THE COURT: When did you pick up the name General?

THE WITNESS: I would say in August of 1967.

Q We have the certificate of incorporation that was signed by Mr.Bolling on October 23, 1967. The name of the corporation at that time was General

Auto Sales & Leasing.

Did you use the name General in connection with --

A Yes, right. I just was using the name General Auto and we were incorporated, we had to take a check with the State to find any similarities in names to register and it turned out to be General Auto Sales & Leasing, Inc.

Q You were doing business then and also before?

A Right.

Q Before General was incorporated?

A Right.

Q Could you state what it is -- was it Mr. Holstead over at Clements-Gillogly, did you mention Mr. Holstead?

A I believe it was he I talked to.

Q Could you state what you said to him and what he said to you?

MR. KAPLAN: Objection, your Honor.

THE COURT: Overruled.

MR. KAPLAN: This is hearsay as to us.

THE COURT: I think the jury understands.

A Repeat the question.

Q Just tell us what you said to Mr. Holstead and what he said to you concerning his communication, during this communication prior to October 6, 1967.

A He said something to the effect that he didn't want to sell any cars.

Q What did you ask him or tell him?

A I told him that by starting to deal with us they would have quite a -- that we were anticipating quite a volume of car sales. In other words, it would be quite a large number.

Q You were a dealer at that time, a New York State licensed dealer, a new car dealer?

A No, we got that later.

Q What type of transaction were you proposing?

A That he be a source of supply because at the particular time Nabcor would issue an MV 50 for an automobile.

Q Will you explain what that is, please?

A At that time the MV 50 was like a certificate of sale to register the car with the State and Nabcor had this and they would take it.

Q Was that MV 50 necessary in order to transfer title from the dealer to the customer?

A An MV 50 was necessary to be made out for the customer before a customer could get ownership of a car, yes.

Q Did one have to be a new car dealer to be able to make out the MV 50?

A Yes, either to be registered as a new car dealer in order to issue the new car MV 50.

Q What happened? You indicated you were not able to obtain cars. Could you state what it is that Mr. Holstead said to you concerning that?

A He said something that he would check with the zone, or something to that effect.

Q Was there any additional discussion?

A I don't particularly recall right at the moment.

Q Was there any subsequent discussion with Mr. Holstead or anyone else at Clements-Gillogly subsequent to that?

MR. KAPLAN: May we approach the bench?

THE COURT: Yes.

(At the bench)

MR. KAPLAN: I think we are entitled to an instruction that these conversations with Clements-Gillogly are not receivable against General Motors.

THE COURT: I'll make the same rulings as I did before. It's the same situation with Bolling.

MR. KAPLAN: English was not there and Strimple was never there when English was there. All of the conversations between Strimple and Gillogly have nothing to do with GM. It's all hearsay.

trial is coming along okay. The jjry has been told time and again, and I can repeat this, that the conversations that occur where General Motors is not present are not usable against General Motors until there is a connection with General Motors shown by evidence. I have told them that again and again. I think that's enough. That puts it in a logical way.

MR. KAPLAN: I would like to give that instruction again because, especially with this witness, that problem arises over and over again. There are four dealer defendants and I ask that the instruction be given.

THE COURT: All right.

While you are here, the MB50 was a form that had to accompany any transfer of title?

MR. PERSON: From a licensed new car dealer but not a franchised dealer. It was a question as to whether you were a licensed dealer.

THE COURT: When did General get its license?

MR. PERSON: May I ask him?

THE COURT: Yes.

(Pause)

MR. PERSON: Apparently the end of '67 or so. But he was not a licensed new car dealer at the outset. He was dependent upon Nabcor's MV.

THE COURT: How could they be placing orders themselves with dealers in Buffalo?

MR. PERSON: Through Nabcor. This was attempted --

THE COURT: I thought Bolling was saying he was trying to go out and get their own sources of supply in Buffalo.

MR. PERSON: Correct. The title would be running through Nabcor.

THE COURT: So Nabcor would be buying from the dealers there?

MR. PERSON: The title would run that way.

THE COURT: Nabcor would be buying from the dealers and reselling to the customer because Nabcor was the only one that could execute an MV50?

MR. PERSON: Until General became licensed.

THE COURT: You are saying that Bolling and Strimple went around to place these orders? They were saying you would have to sell to Nabcor?

MR. PERSON: In at least one instance. It was discussed in one place in a different context, and that was a question of payment. They didn't want argument.

MR. RUNFOLA: Even if Mr. Person were willing to stipulate that any testimony concerning --

THE COURT: I don't want to get into the motions. They're very serious matters. I will not get into it in a piecemeal fashion. I would like to accommodate you but not on that.

MR. KLEINBARD: I don't mean any criticism but this is going so slowly, your Honor, it seems to take so long, is there any way overthe lunch hour we can do something?

THE COURT: It's the nature of the thing, I'm afraid.

(In open court)

THE COURT: I think we'll break now.

I will give this instruction. There will be testimony about conversations which Mr. Strimple says he had with various dealers in Buffalo. Apparently there will be some of those conversations, or most of the conversations, where nobody from General Motors is supposed to have been present.

I reiterate the instruction I gave you before: That where you have conversations which took place in the absence of anyone from General Motors, those conversations cannot be considered against General Motors until and unless there is some independent connection by other evidence that links General Motors with those events and transactions.

We will see you at 2:15.

(Luncheon recess)

AFTERNOON SESSION

2.15 P.M.

DALE STRIMPLE, resumed.

THE COURT: We will adjourn at 3.30 this afternoon.

DIRECT EXAMINATION CONTINUED

BY MR. PERSON:

Q Mr.Strimple, we were in the middle of your testimony concerning the communication with Clements-Gillogly, and could you continue, please?

Go back and state again, I guess, when did this occur?

THE COURT: He has given us that once. We don't need to repeat it. He had given us one conversation and ending up, according to the testimony, that Holstead said they would check with the zone.

What happened after that?

Q We talked about this conversation this lunchtime?

A Yes.

Q Do you have any additional testimony concerning this communication?

A I am not sure of the date. I mean, when I try to pinpoint this down to a few days, that goes back eight or nine years I cannot absolutely state the date. I can state the conversation.

Q Will you, please?

A Mr. Holstead said --

THE COURT: Wait, I am confused. Are you asking him about the conversation that he has already described or a new conversation?

MR. PERSON: No, the same conversation.

THE COURT: You are asking him to testify about it all over again?

MR. PERSON: Yes. I don't believe that what he testified before was exactly the way that it occurred.

MR. WATSON: I object to that, your Honor, it is a leading question and the witness already testified and this is repetitious.

THE COURT: Go ahead, Mr. Strimple.

Q Would you, please?

A Mr. Holstead made the statement to me at the time that Mr. English had advised him not to sell, or something to that effect.

Q Do you recall whether at that time you were aware of Mr. Bolling's communication with Mr. English?

A Yes, I believe I was. This is why I am not sure of the date.

At the time that Mr. Bolling told me about Mr. English, after being a dealer for 20 years it was very hard for me to believe that dealers did not want to sell cars and that I just never believed that I would have any problems getting a source of supply in my particular field in which I spent 20 years.

Q Did you communicate -- I am sorry, was this communication at a time when you and Mr. Bolling had come together as of October 6 or was it before or after October 6?

A Well, on this period of time it, to the best of my recollection, it was a little before October 6.

Q Was there any discussion concerning Mr. Bolling's contact with Clements-Gillogly?

A Mr. Bolling had told me the conversation that Mr. English had that had been testified to earlier.

Q I don't mean that. I meant with Clements-Gillogly at that time.

A The only conversation I had with the fleet manager, which turned out to be Mr. Holstead, and was told that he wasn't interested in selling in this particular way.

Q Was there any discussion by you or Mr.

Holstead concerning your relationship, actual or intended, with Mr. Bolling?

A No, I didn't discuss Bolling with the dealership at all.

Q Will you state as of October 6, 1967, what activities you engaged in in order to obtain orders for automobiles?

A Would you repeat that question?

(Question read.)

THE COURT: Are you asking what he had done prior to or done on that date or what?

MR. PERSON: Beginning October 6, 1967, and continuing after that date.

A As I stated in earlier testimony, I was setting a series of different people of influence to help me in the sale of new automobiles and I had contacted quite a few.

Q Did you contact any additional ones other than the ones you told us about?

A Yes, I did.

Q Do you recall how many?

A At least eight or ten.

Q Was that total or in addition to the others?

A I would say at this period of time I had between eight and ten. In fact, I had one as far as North Carolina.

Q Did you run any advertising to obtain orders for new cars?

A Yes, we did. We ran considerable broker ads.

Q What does that mean?

A After we became a master distributor, which included 50 counties in the State of New York -- in the United States there is roughly 42,000 dealers and my approach --

THE COURT: You were asked if you ran ads. Did you run ads?

THE WITNESS: I ran ads to get interested brokers in the state.

Q Did you run any advertising in order to solicit for orders for new cars directly?

A No, because I didn't want to take the route that Mr. Bolling had taken which created the Buffalo Automobile Dealers Association going across to all the dealers, so I was advertising for myself for brokers.

MR. KAPLAN: I move to strike everything after "No," your Honor.

THE COURT: I'll grant the motion to strike.

Q For what reason did you not advertise for new car orders?

MR. KAPLAN: I object to the question, your Honor.

A I thought my brokers would sell cars.

THE COURT: Just a moment.

Certainly he cannot testify in a conclusory fashion that all the dealers did anything. I don't know that it's relevant to show his reason for not placing ads. The fact is that he didn't place ads.

MR. PERSON: I think his reasoning would be enlightening if the person is in the business of selling cars; it would be useful to know why he did not attempt to sell cars at a particular time. That's what I'm trying to get him to say and not in conclusory terms, if he can avoid sweeping generalizations.

MR. KAPLAN: I don't think his reasoning is relevant. Furthermore, it's a back doorway of trying to get in admissible hearsay.

THE COURT: I think so. I'll sustain it.

Q From October 7, 1967 to the end of 1967, how many orders for new cars did General, including Mr. Bolling and you, obtain?

A I had quite a few orders being placed by my broker in Watertown.

Q Was that Mr. Young?

A Yes. Mr. Owens, which was another one ofour brokers, was placing orders.

THE COURT: Are you asking how many orders General got from the public or are you asking how many orders other brokers got?

MR. PERSON: I only had intended to ask for what General itself obtained as retail orders for General.

THE COURT: Let's answer that.

A The question is from October until January 1?

Q The end of '67; from the time you began presumably on October 7, 1967 with General Auto Sales, Inc., to the end of the year, can you recall how many orders General obtained directly from ultimate purchasers for new cars?

A I would say probably in the neighborhood of 10 or 15.

Q You mentioned you had other orders that came from Nabcor franchisees. How many Nabcor franchisees were under General Auto Sales & Leasing through the end of 1967?

A We had H. A. Young in Watertown and Owens in Niagara County.

Q Was that Lockport?

A Yes. That's Niagara County.

Q Was that American Auto Brokers?

A I think that's what he called himself, yes.

Q Have you heard the name Autolivery, Inc.?

A Yes, I have. Autolivery was a broker of record, I believe, before I became a master distributor.

THE COURT: He was a broker you heard of?

THE WITNESS: After I became a master distributor I heard about this Autolivery broker. That was his name. I never had anything particularly to do with him. I just heard about him.

Q Did Autolivery, Inc. submit any orders to General?

A I don't recall. I think we might have delivered a car for them that was ordered before we became a master broker, but I'm not positive. He did take and create some notoriety for himself as a broker, now that I can recall.

THE COURT: I don't think there is any question about notoriety.

Mr. Person, what is your next question?

Q How many orders did Mr. Young submit to you throughout his business relationship with you?

A I don't recall the number but there were quite a few. I mean he was taking and getting cars every week or two. He was running an active brokerage.

Q Do you recall when your first order from Mr. Young was received by General?

A It was within a relatively short time after we took the master brokerage that we began to receive orders. In fact, we might already have gotten an order or two that was already in Nabcor.

Q Can you recall how much money you contributed to General from the time you began General Auto Sales as a capital contribution?

A It was roughly $8000 that I borrowed from my brother-in-law, 4000 from my brother, and another

12,000 I had to put on as a mortgage on my home, plus my brokerage fees.

Q What were your brokerage fees?

A Originally I laid out 3500, plus $3000 or $4000 more, plus a note for $10,000.

THE COURT: Wait a minute. You say you borrowed $8000 from your brother-in-law?

THE WITNESS: That's right.

THE COURT: Then you borrowed 4000 from your brother?

THE WITNESS: Yes.

THE COURT: And you took a 12,000 mortgage on your house?

THE WITNESS: Right.

THE COURT: All those amounts, did you put those amounts of money into General?

THE WITNESS: Yes.

THE COURT: Totalling $24,000?

THE WITNESS: Right.

THE COURT: And this, you were saying, was in addition to brokerage payments?

THE WITNESS: Fees that I made for the franchise. $3500 in cash. I think at the time I signed the master brokerageship there was roughly

4000 additionall

THE COURT: That you paid for the master?

THE WITNESS: Yes. And then I put in 10,000 on top of that.

Q What are you referring to when you say "10,000 on top of that"?

A On top of the cash. I took a note for 10,000.

Q Have you ever paid that note?

A No.

Q You testified about communications with Clements-Gillogly concerning obtaining sources of supply. Did you attempt to communicate with any other dealers in the Buffalo area, as far cut as you want to make the area, before or after October 6, 1967?

A Yes, I did.

Q Can you identify which dealers you communicated with?

A Yes. There was Bob Baines Chevrolet. There was Kem Dengler Chevrolet and Oldsmobile. There was Laks Chevrolet.

Q Which one was that again?

A Laks.

There was Keller Chevrolet. There was

Hamburg Chrysler Plymouth. There was Maroone Ford. There was Rusher Ford. There was Tinney Cadillac. There was Brown Pontiac, Holiday Oldsmobile.

That's among some. There were others, but I can't recall them offhand.

(Continued on next page)

T3

Q Glenn Campbell Chevrolet?

A Glenn Campbell Chevrolet.

Q Paul Batt Buick?

A Paul Batt Buick, Maier-Schule GM Trucks.

Q Was there a Kaiser Cadillac?

A Yes, Kaiser Cadillac. Also Sher-Amhurst Rambler, Lee Martin Ford.

That is all I can think of at the moment.

Q By the end of -- let me go back and ask you were you able to obtain any automobiles from any Ford dealer in the Buffalo area?

MR. KAPLAN: Objection. I just don't see what this has to do with this case. Could we approach the bench, your Honor?

THE COURT: Yes.

(At the side bar.)

MR. KAPLAN: There are specific dealers identified as being claimed to have refused to sell during the conspiracy. I have here an interrogatory answer and certainly he ought to be limited at the outset and even as to some of them I dispute the relevance.

THE COURT: Are you prepared to go into the chapter and verse? I tell you, Mr. Person, this is a serious problem, to get these generalities about -- you have a problem anyway you put it.

In the first place, if you go into the details you might get into conversations which are hearsay.

If you get the generalities, then there is an opportunity for sliding over relevant details.

I cite Mr. Bolling's testimony at the beginning of the day yesterday, your examination at page 2140:

"Q Could you state how many orders you obtained during your first month of doing business, approximately?

"A I would say eight to ten.

"Q What did you do with those orders?

"A Placed them with Nabcor in Philadelphia.

"Q Were you able to obtain all of these ordered automobiles without any difficulties?

"A No, sir."

And then there was an objection which I sustained.

"Q Did you obtain all these ordered automobiles?

"A No, I did not.

"Q Do you recall how many of these ordered orders for automobiles that were to be filled by somebody, new automobiles, that were unfulfilled?

A Yes, I received several cars from Nabcor that had been ordered.

Q But as of October 7, 1967, were there any orders for automobiles which Generalwas seeking to fill?

A We were Nabcor of Western New York and it didn't make any difference where we ordered our cars, so long as we got them.

Q I am asking you and Don Bolling now, together, in this company called General Auto Sales & Leasing, Inc., had any orders for new automobiles which General sought to obtain a source of supply for?

A Yes. We were continually, had some orders that we were trying to immediately fill.

Q Were any of these orders for General Motors products?

A Yes, they were.

Q Can you recall whether you -- when you named various dealers, including some GM dealers --

A Bob Bain Chevrolet.

Q Let's start with Bob Bain Chevrolet.

Did you have any communications with Bob Bain

Chevrolet concerning any order or orders for Chevrolets?

A Yes, I did.

Q When did this occur?

A I believe it was in the Winter of 1967.

Q Who did you speak to?

A I spoke with Mr. Bain himself and I told him --

Q Excuse me, where was Bob Bain Chevrolet located?

A It was located on Transit Road, which is a very short distance from my location in Lancaster.

Q Was the area broken down by blocks? Was there any specific --

A I beg your pardon?

Q Were there blocks that separated you and Bob Bain Chevrolet?

A Blocks? No, blocks that separated Paul Batt and myself. But probably like a mile to Bain Chevrolet.

MR. KAPLAN: May I note my objection to relevance as to General Motors of the testimony relating to Bain?

THE COURT: Same instruction to the jury.

Q Would you state -- will you describe the discussion you and Mr. Bain had?

A I went in to Mr. Bain, which I knew, and told him that I would like to issue a purchase order for between 200 and 400 new Chevrolets to supply --

THE COURT: For what?

A (Continuing) Two to four hundred new Chevrolets to supply the Nabcor System.

Mr. Bain was very, very happy to see me and very happy to acknowledge that he would like to sell that many cars and I talked to him at the time about the money situation and Mr. Bain asked me how could I pay for this amount of cars.

I told him that Mr. Maiorana would handle the draft, the Nabcor System, and he said, "Fine, I will sell you as many Chevrolets"as we could use.

THE COURT: I didn't quite hear you. Mr. Maiorana would do what?

THE WITNESS: Supply a draft for the cars.

Q Is that a form of payment?

A Yes. That he would pay for the automobiles in the amount ordered because we were ordering for the Nabcor System.

THE COURT: What did Mr. Bain say?

THE WITNESS: That he would be very happy to sell this amount of automobiles because we were talking at $25 to $50 over invoice and a dealer always gets 2 per cent factory rebate on top of this.

So that a two to four hundred car purchase would amount to quite a few thousand of dollars profit for a dealer and actually all that was involved was writing the orders.

Q Had you discussed General's business, the kind of business that General and Nabcor were in with Mr. Bain at that time?

A Had we discussed it?

Q Did you discuss with Mr. Bain the kind of business that General was in?

A I think that I just said for the Nabcor System and Mr. Bain seemed to know what the Nabcor System was.

MR. KAPLAN: Your Honor, I move to strike the last piece.

THE COURT: Overruled.

MR. KAPLAN: If Mr. Bain said something, I would like to hear that.

THE COURT: Motion denied.

2 Q Did you have any communication with Nabcor concerning this?

A Yes. I called Frank Maiorana on the telephone, told him that I had made an order for this amount of automobiles; that I wished him to call Mr. Bain in his Philadelphia office and set up means of payment and talk over means of delivery and this sort of thing.

Q What was the next thing that you can recall in connection with this transaction that you described?

A I went in to see Mr. Bain, I believe this is the way it was, I went in to see him and called Mr. Maiorana and Mr. Maiorana had been in touch with me and that everything was being arranged.

And Mr. Bain told me that he could not sell us the cars, but if I had any questions I should contact the Buffalo zone.

Q Did you have any conversation with Mr. Maiorana prior to this other than what you testified to?

A Not that I can recall at the moment. I worked for Mr. Bain for a while, it was just a matter of -- also General Auto bought parts and everything from the Bain Service Department. It wasn't any --

Q Was there any name of any GM employee given by Mr. Bain?

A Somebody by the name of Womack, something like that.

Q Is this all of your discussion with Mr. Bain at that time?

A We could sell the cars, went to him with the authorization for Mr. Maiorana -- I don't think of anything specifically outside of the refusal to sell.

Q Did you attempt to communicate with Mr. Womack?

A I placed a call to Womack, I believe, once.

Q Was that in connection with this or some other transaction?

A When I put the call in for him it was because of trying to talk to him about the supply of cars, and I don't know whether it was this particular time or any one of a dozen other times I ran into refusals to sell and I called.

Q Did you make any complaints to any governmental bodies concerning this or any other transactions?

A Yes, I did.

In the spring of 1968 I became completely disenchanted with what was taking place in the Buffalo area. I went to the Attorney General in Buffalo and asked them to investigate totally the Nabcor system and possible violations of antitrust between automobile factories, banks, better business bureaus and newspapers, which they did.

Q Did there come a time when you had further communications with Bob Baines concerning possible purchases from Baines?

A There came a time when I called up and ordered one automobile, something like that, and I had no problem. After the grand jury was in session, and this sort of thing, I didn't have any more problems, particularly at the time this was going on. And they met -- word was all over the area that dealers were being called in to testify. It was quite widely publicized.

Q Did you ever purchase a car and park it outside of Baines' showroom?

A Yes. At the time that I was trying to get a source of supply I got a Chevrolet and parked it outside of Baines'showroom. He and another Chevrolet dealer were very competitive with each other. I told him that this other dealer had sold me the automobile.

Q Did Mr. Baines say anything at that time?

A WEll, I forget exactly what he said, but it was not too complementary. He said something about -- I can't recall the exact text. It was something that had to do -- he had turned down an order and they were selling to me, or something like that.

Q Do you recall the name of the other dealer?

A It was Keller Chevrolet.

Q Did you ever communicate with Keller Cheveolet concerning this automobile?

MR. KAPLAN: I object and ask that we approach the bench and I'll explain why.

THE COURT: Yes.

(At the bench)

MR. KAPLAN: There is no claim in this case that Keller Chevrolet ever did anything and I object to the relevance of it. This is no time to be finding out that Mr. Strimple wants to amend the complaint to add Keller Chevrolet. Here's the list of dealers (indicating).

MR. PERSON: Keller told him he was creating quite a stir. Keller told Strimple --

THE COURT: We're getting so far afield: The whole thing about parking outside of Baines and uncomplimentary remarks. Let's go past this.

I'll sustain the objection.

(In open court)

BY MR. PERSON:

Q Do you recall having any communications with Paul Batt Buick?

A Yes, I do.

Q Could you please state with whom you spoke, first of all?

A I spoke to Paul.

Q Mr. Batt?

A Paul Batt himself.

Q When did this occur?

A In the winter of '67.

Q What did he say to you and you say to him?

A Well, we talked about the amount of new automobiles that I was projecting on purchasing -- delivery.

I talked to him about the distributor that was in North Carolina because Mr. Batt was going to effectively work the situation of delivering used automobiles that came in on trades by train to Mr. Britt in North Carolina, and also, in addition to this, I also placed an order for a Buick Electra, a 1967 model.

Q You placed this order when?

A I think it was in December of 1967.

Q Did you have any further communications with Paul Batt Buck concerning that Electra?

A Yes. The automobile, as to specifics, and I went up to pick it up or to arrange for delivery, and they had a sign on it on the windshield "Get ready for General Auto Sales" or "Get ready." That's where they polish the cars and clean them up, and that sort ofthing.

I went back the following day to pick up the automobile and was told that the car had been taken back by the zone.

Q Who told you that?

A The sales manager, Mr. Collins. And I protested valiantly. In fact, I protested to Paul himself who made the statement that he had never had a car purchased back in all the years he had been in business; and in all the 20 years I had ever been selling cars I never had a car purchased back either, and he expressed regrets, and this sort of thing, and placed in another order.

Q Was there any discussion or any reason given for the zone taking the car back?

A Something like the zone wanting to check some defect or something.

Q Do you recall who told you that?

A I believe it was Collins. Batt was right there. The two of them were --

Q Was there any discussion concerning any knowledge by General Motors that the car was supposed tobe delivered to General?

MR. KAPLAN: I object to the leading.

(Record read)

THE COURT: I don't understand the question, I'm sorry to say.

Let's not lead.

Q Was there any discussion at all about Nabcor or General in connection with any reason that was given for the repurchase of the car?

THE COURT: Look, you have asked him for conversation. He's capable of telling it. Don't lead him.

Is there anything else to these conversations with the Batt Buick people on either of those days?

(Pause)

THE COURT: The answer is no, there is nothing else?

THE WITNESS: I can't think of anything at the moment.

Q On the day you looked at the car, did you have any specifications with you concerning that car?

A Yes. I had specifications as to color and equipment that was being ordered for a particular customer.

Q Did you check those specifications against the car itself at that time?

A Yes, I did.

MR. KAPLAN: I'll stipulate that he thought it was the same car when he went to look at it, if that will save time.

Q You testified that Mr. Batt reordered a car for you, is that correct?

A Yes.

Q Did you obtain that car subsequently?

A Yes.

Q Do you recall when, approximately?

A The second car?

Q Yes.

A I remember it well. I lost a couple of hundred dollars on the used car coming in.

MR. RUNFOLA: The question is does he remember when.

THE COURT: We have the date.

MR. PERSON: February 22.

THE COURT: That's the date?

MR. PERSON: That's February 22, 1968.

Q Do you recall Kem Dengler Chevrolet Oldsmobile, do you?

A Yes.

Q Did you have any discussions with anyone there concerning acquisition of automobiles?

MR. KAPLAN: Objection.

THE COURT: Isn't that on the list?

MR. KAPLAN: It's on the list, but not a defendant. Anything he could possibly say would be hearsay beyond that he went --

MR. PERSON: We'll try to limit that.

Q Did you have any communications with Kem Dengler?

A We drove out to Mr. Dengler's Chevrolet-Oldsmobile dealership -- when I say "we," I mean me, Mr. Bolling, and also Mr. Britt of North Carolina; he went with us to Dengler because Mr. Britt was becoming a master distributor for North Carolina.

MR. PERSON: We don't need any more.

THE WITNESS: I want to explain why he was with us.

Q Did you have any orders with you?

A Yes. We talked to Mr. Dengler again about ordering between 200 and 400 automobiles to supply the Nabcor system.

Q Did Mr. Dengler accept any orders?

A Mr. Dengler was very pleased to accept.

Q Don't say what he said. We are trying to confine ourselves to what you said.

A He wanted to do business.

MR. KAPLAN: Objection and move to strike..

THE COURT: We can't avoid this, really.

Q You gave Kem Dengler --

A We gave them several specific orders for cars, colors and equipment, at that particular time along with a deposit.

Q Subsequent was there any communication with Kem Dengler concerning these orders?

A Subsequent --

Q Don't state other than yes or no.

A Yes.

Q Did you learn from Kem Dengler that they would not fill the orders for you?

A Yes, I did.

THE COURT: When was this?

THE WITNESS: A couple of days later, your Honor.

THE COURT: When was the original visit?

THE WITNESS: Back in the fall of '67.

Q Can you be any more precise than that?

A Well, I would say it was close to the end of September, the first week in October, very close in there.

THE COURT: Was this before or after the incidents with Batt Buick?

THE WITNESS: It was before.

THE COURT: Was it before or after your talk with Mr. Holstead at Clements-Gillogly?

THE WITNESS: I think it was very close to the same period of time.

Q You are familiar with Laks Chevrolet?

A Yes.

Q Do you know who the owner was back in late '67?

A Yes, I did.

Q State his name, please.

A Ray Laks.

Q There was a Buick dealership also known as Laks?

A Yes.

Q Who was the owner of that?

A His son.

There is also a Volkswagen dealership now with his other son.

Q Did you have any communications with either Ray Laks or his son concerning the acquisition of automobiles with General?

A Yes.

Q When did this take place?

A Around the same period of time, the latter part of '67.

Q Who was present at the meeting? Was it a meeting or a telephone conversation?

A It was a meeting.

Q Who was present at the meeting?

A Ray was there, Don Laks was there, the younger son was there, Don Bolling was there, that I can remember, and myself.

Q Did you have any orders for automobiles at that time?

A Yes.

Q What type of automobiles?

A Chevrolets and we had a couple on Buicks.

MR. PERSON: I would like a side-bar conferen ce.

THE COURT: We have to adjourn now until 10 o'clock tomorrow.

(Adjourned at 3:25 p.m. to November 17, 1976, at 10 a.m.)

NATIONAL AUTO BROKERS CORP.,
et al.,
Plaintiffs, 70 Civ 5 421A
vs.
GENERAL MOTORS CORPORATION,
et al.,
Defendants.

New York, November 17, 1976;
10.00 A.M.

Trial resumed.

- -

(Jury not present.)

THE COURT: Are there applications?

MR. PERSON: I want to make some offers of proof so I can find out whether or not certain witnesses will be allowed.

THE COURT: All right.

MR. PERSON: In the first case it was Moe Cerota, and with respect to Moe Cerota who already testified, I wanted to make an offer of proof that he would state that the only benefit of a fleet certificate is that it entitled the holder to a fleet allotment.

Also that if a purchaser does not have a fleet certificate the car comes of the dealer --

THE COURT: I don't know why we are taking time about this, we have a jury waiting. Why are we

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taking time out?

MR. PERSON: At some point --

THE COURT: You can make it, but let's not do it now. Let's bring the jury in.

(Jury present.)

DALE STRIMPLE, resumed.

THE COURT: All right, go ahead.

MR. PERSON: May I have just a side bar?

(At the side bar.)

MR. PERSON: We have had testimony concerning certain dealers who are not defendants in the action, but this testimony would affect other dealer defendants in the action.

To the extent there would be hearsay I ask that it be admissible as an exception to the hearsay rule on the grounds that the evidentiary hearing did not determine that part of it and to the extent that the hearsay is proven to be inadmissible by the time the case goes to the jury if at all, that you can rule appropriately that the jury disregard that hearsay testimony.

MR. KAPLAN: I object to it, your Honor. Now he wants to get hearsay about a dealer conspiracy. It couldn't possibly be more prejudicial to us.

We would have to consider a motion for a severance or a mistrial.

THE COURT: There is not going to be any severance or mistrial. We have to handle this as one trial.

Now, how many dealers is he going to talk about?

MR. PERSON: Probably between four to eight --

THE COURT: Between four -- dont you know now?

MR. PERSON: I know which dealers he listed.

THE COURT: Does he know when and what was said? Did he present orders, go out and say he wants 200 to 400 cars? Do you know what he is going to say?

MR. PERSON: All of the dealers that he listed I haven't covered with him, but the ones that are in the pretrial brief, I know what he is going to say. Some of those include that kind of testimony.

THE COURT: Just let him go. He is going to testify that he went around and wanted 200 to 400 cars and they wouldn't give it to him.

MR. KAPLAN: This man was asked in the interrogatories what dealers refused to sell to him pursuant to the violations of law alleged in the complaint, and I certainly object to his going beyond anybody he identified there.

MR. PERSON: He had the pretrial brief for a long period of time.

THE COURT: If there is some reason to -- he is a plaintiff and if he is bound by his pretrial representations, the thing is there is such a continuing vageness. He doesn't know what he is going to say. These witnesses absolutely expand and contract as the sun moves through the sky. I never simply have seen such a totally unreliable group of people and we just have problems and we continually have conferences because -- I mean it is natural that Paul, Weiss would object if they have engaged in discovery and have asked what dealers refused him cars and they have gotten answers, one would think that subject to some minor amendment because somebody made a mistake or something we would stick to it, but nothing isis ever stuck to.

I think you are entitled to stick to it and if a dealer is brought up -- I don't know the pretrial record, I don't carry it in my mind, and most of it I have never seen, but I will rule as a general thing that if you have a formal limitation which has been made by this plaintiff, I think he should be bound by that.

There are times when it is a formal limitation and he is bound and you can't present evidence and there are times when it just goes to credibility, but where do you draw that line? I don't know. I haven't seen the interrogatories and the answers.

MR. KAPLAN: I have them right here.

This is an excerpt from the one I am talking about.

THE COURT: What Mr. Kaplan is showing me is an excerpt from answers of General Auto Sales & Leasing, the first set of interrogatories, and Interrogatory 14 asks:

"Do you claim that you were unable to purchase new automobiles from franchised dealers as a result of any violations of law alleged in the complaint, and, if so:

"(a) State the date of each instance; and

"(b) Identify the franchised dealer from whom you were unable to purchase any such; and "(c) Identify each communication relating to each such instance and so forth."

Now, Mr. Strimple's answer on April 1, 1972:

"Plaintiff claims it was unable to purchase new automobiles from the following dealers as a result of the violations of law alleged in the complaint:

"(a) Defendants in this action:

"Bob Bain Chevrolet;

"Paul Batt Buick;

"Glenn Campbell Chevrolet:

"Kem-Dengler Chevrolet - Oldsmobile;

"Clements-Gillogly or Hamister-Gillogly Chevrolet;

"Al Maroone Ford;

"Rusher Ford; and

"(b) Non-defendants:

"David Hallman Chevrolet;

"Laks Chevrolet;

"James Steven Buick."

The refusal of the above dealers to sell to plaintiff occurred from September, 1967, through 1968."

There is some additional further answer, and does that add anything?

MR. KAPLAN: I don't think it adds any party or any dealers.

THE COURT: Doesn't this cover what you are asking about now and about the testimony?

MR. PERSON: To a great extent, your Honor.

THE COURT: You can perhaps quibble about whether refusals or inability to purchase was broad enugh to cover this kind of attempt to get blanket commitments, but I don't think that is a distinction that this answer covers, what he is now testifying about, and I think that is the reason General Motors counsel asks these questions, was to find out what they had to investigate, so no evidence will be admitted about the inability to purchase cars except with respect to the dealers named here.

(In open court.)

DIRECT EXAMINATION CONTINUED

BY MR. PERSON:

Q Mr. Strimple, do you recall your testimony yesterday about Clements-Gillogly Chevrolet?

A Yes, I do.

Q Have you had a chance to think about the accuracy of that testimony?

A Yes. I am not sure of the date and when I made the statement that Mr. Holstead talked about Mr. English back in October of 1967, I am not sure that was the time he talked about it.

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Q Was there a time at which he did talk about Mr. English?

A Yes.

Q We will cover that in a short while.

Do you recall your conversation with Laks about Buick Opels?

A Yes.

Q Do you recall what that conversation was, please?

MR. KAPLAN: Objection, your Honor. Laks is not a party and it is hearsay.

THE COURT: Is he listed in that answer?

MR. KAPLAN: It is, but still he is not a party.

THE COURT: I will overrule that.

Q Would you please describe the conversation? First of all, tell me when it took place.

A We approached the Laks organization about purchasing automobiles.

Q When?

A I believe it was in the latter part of 1967, early part of 1968, and specifically talked to them about anticipation of a substantial amount of cars.

They said they were interested in the business, indicated they would sell us automobiles to supply our needs, and in a few days decided not to sell us cars.

Q Did you have a communication with somebody at that time?

A Yes, I did.

Q Whom did you speak to?

A I believe it was Ray Laks.

Q Can you tell me what you said to him and he said to you?

MR. KAPLAN: Same objection, your Honor.

THE COURT: I think this is the thing we have gone through before. I think you can bring out, through this witness, the fact about whether they got cars or didn't get cars. You can certainly bring out what he was doing, whether he ordered specific orders, whether he was talking in terms of wanting a commitment for 200 to 400 cars, whether he ordered individual orders or gave five or seven orders. He can testify to all of that.

The thing he cannot testify about is to quote Ray Laks or anybody else as to any reason why they would not sell. If you want to show that you can bring Ray Laks in here as you have brought in the people from Rohrer and Ruckle and so forth. They know why they didn't sell and he's not going to prove it through hearsay.

MR. PERSON: Your Honor, I thought I had received your ruling to the effect he could --

THE COURT: Youdid not.

MR. PERSON: I intended to make an application --

THE COURT: That application is denied. There is nothing preventing you from trying to get Ray Laks in, just as you have other people, and see what he will testify to.

MR. PERSON: Your Honor, are you aware that I had indicated that there apparently was no prior ruling on this?

THE COURT: I'm ruling now. There is no distinction between the situation now and before. I'm not going to permit this witness to try to prove through hearsay testimony something that he does not know about and heclaims he heard about through Ray Laks.

If Ray Laks had a reason for not selling, or if he had talks with General Motors or didn't have talks with General Motors, you prove that through people who know.

BY MR. PERSON:

Q Were you unable to purchase any cars through Ray Laks Chevrolet?

A I was refused.

THE COURT: The answer is yes, you didn't get any cars from Ray Laks?

THE WITNESS: Right. Not at that time.

THE COURT: You got it later?

THE WITNESS: Later I purchased a car from him.

THE COURT: You said you talked in anticipation of amounts of cars when you talked to the Laks people.

THE WITNESS: I had specific cars to order.

THE COURT: Did you give them specific orders for specific cars?

THE WITNESS: I took and listed specific cars, colors, to fill orders at the original time. I went in and they agreed to do business, yes.

THE COURT: Did you tell them you wanted to order specific cars?

THE WITNESS: Yes. I told them I wanted to order specific cars and that we were --

THE COURT: What specific cars did you order? Did you give them written things or just talked about it?

THE WITNESS: I believe, your Honor,

that at the original meeting, talking about specific cars that were going to be ordered, in view of the quantities of cars that we were talking about that I had to get back to them within a couple of days with the actual orders for automobiles that were for right then, and they were going to check inthe zone to talk about the vast quantities we were talking about, the numbers, for the Nabcor system.

THE COURT: What were those vast quantities?

THE WITNESS: We had been talking in terms of a couple of hundred automobiles, at least; and we were trying to arrange drop shipments across the country, whereeever Nabcor brokers needed them when they were taking an order.

THE COURT: I know this is a hard line to adhere to, Mr. Person, but the thing I'm really precluding as far as conversation -- and this is what I have done throughout the trial -- is any statement, any hearsay testimony, about the reason for the dealer refusing or not filling orders, or whatever occurred.

This witness, it seems to me, can testify, and should testify if this is to have any meaning, as to what he told the broker, and we now know the main elements, the possibilities:

Did he tell the broker that he had specific orders in the Buffalo area? One issue would be whether those specific orders were the seven orders referred to in Exhibit F7, or were they some other orders? How many? What cars? What did he do? Did he give the orders in writing, orally, and so forth?

As far as anything beyond specific orders, if he was trying to make some arrangement for buying 200 or 400 cars, whatever it was, what did he ask about that? Did he ask about drop shipment? What did he say?

In other words, what was his proposal to these people?

Otherwise, when you say they refused something, neither I nor the jury is going to know what was refused.

You certainly ought to bring out those things, and that is his side of the transaction, and certainly he knows what he was asking for and can testify to it. There cannot be any argument about that.

But if there was a refusal, the question of the reason of the refusal is very critical, and that's what I'm not going to permit to be done by hearsay.

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You take it from there. I would go back over the last thing. Go over that.

BY MR. PERSON:

Q Can you recall how many orders you went into the meeting with, if any?

A We had between five or seven particular cars that we were trying to fill the orders for.

Q Do you recall Exhibit F7 including a Chevrolet for a customer Stachura, a Corvette --

THE COURT: If he's going to refer to F7, why don't you give him F7?

(Pause)

THE COURT: Does F7 refer to those orders that Multi-Make got and carried over to General?

MR.PERSON: [illegible]es, your Honor.

THE COURT: You are aware of that situation?

THE WITNESS: Yes, your Honor.

THE COURT: There were seven or so orders that Multi-Make got and had not been filled by the time that General was starting in business; is that right?

THE WITNESS: Right.

THE COURT: Next question, Mr. Person.

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BY MR. PERSON:

Q Can you look at those orders for the Chevrolet products. You will see three Chevrolets and two Corvettes on the list.

Do you recall whether any of those orders were the orders that you took with you to Laks Chevrolet?

A Yes, along with a specific order for a truck that we had.

Q That's in addition.

THE COURT: Listen to Mr. Person's question.

Q Were any of the orders you took over there orders that you see on this Exhibit F7?

A Yes. We wanted to order the Corvette and we also wanted to order a regular Chevrolet.

THE COURT: You have referred to two cars now; is that right? Two out of seven.

THE WITNESS: Whatever was left that had not been filled, we were submitting these orders to the dealer.

Q Do you know if any of the orders on this F7 had been filled by the time you had gone to Ray Laks?

A Had any of them been filled?

Q Yes, or cancelled.

(Pause)

A Do we have an exact date that I went to Mr. Laks?

THE COURT: Are you asking me?

THE WITNESS: I'm wondering in terms of the time. I am very concerned about the time.

Q Can you recall what orders you took there? Are you able --

A I know I had several orders.

In the automobile business, Mr. Person, it's quite typical you don't have just the names of the customers. You are just interested in the particular models. All I know is that I definitely had several orders for Chevrolets. I'm not sure of the customers' names at this particular time that wanted them, but I had definite orders for cars.

Q Did you have these in writing?

A Yes, I had them in writing.

Q Did you show this writing to any of the Lakses?

A I talked to Mr. Laks specifically about several models and read the equipment. I don't remember whether I pulled it out and said "here's an order" this way, but I definitely talked to him about specific models and colors and equipment.

Q Did Mr. Laks take down the order in any way?

A Mr. Laks definitely jotted down the information.

Q Did he agree to order these cars?

A It was my understanding when I left Mr. Laks that he was definitely going to accept the business.

Q Was there any understanding about the 200 or 400 cars?

THE COURT: You have not even asked him what he said.

Q Was there any discussion --

THE COURT: I don't understand why you can't ask him what he said. Just let him tell us. If he doesn't remember, he does not remember. If he does remember, he does remember.

You tell your side of the conversation and I think you have got to realize the problem I have got. I don't want you to repeat a lot of stuff that Mr. Laks said to you, but I do want to get your side of the conversation. The jury wants it and the lawyers want it.

You say it as best as you can remember it. To the extent you don't remember it you can't say it. But give us the whole conversation about every feature of it, what you said, and what you asked him, whether you gave him specific orders, whether you asked in general terms, whether you asked about drop shipments, whether you took out of your pocket any documents.

What did you do at that talk? Start over and give us the whole thing.

THE WITNESS: I definitely had several orders with specific cars talking to Mr. Laks.

THE COURT: You say you had. "Had" can mean you had back in your office or in your pocket or in the mind. What did you tell him?

THE WITNESS: I had the specifications with me.

THE COURT: What did you do with the things you had? What did you do with Mr. Laks? Did you talk to him?

THE WITNESS: I talked to Mr. Laks directly.

THE COURT: What did you say to him? What did you ask him to do?

THE WITNESS: I asked him about supplying automobiles for the Nabcor system.

THE COURT: What did you say about that?

THE WITNESS: He said specifically --

THE COURT: What did you say?

THE WITNESS: I said that we were talking about substantial amounts of automobiles; that we would need drop shipments, which would mean the cars would be dropped off at different locations.

THE COURT: Did you mention numbers of cars specifically?

THE WITNESS: I was talking in numbers between, anticipated sales of, 200 to 400.

THE COURT: Did you say who would be buying these cars, whether it was your company or Nabcor?

THE WITNESS: I don't believe that Mr. Laks asked the question.

THE COURT: Did you say?

THE WITNESS: I said specifically the cars we were going to need in the Nabcor system. That seemed to be sufficient.

THE COURT: Did you have an idea at that time as to who would actually be the purchaser, Nabcor or General?

THE WITNESS: I definitely felt that any

automobiles that we can get would be absorbed by Mr. Maiorana, the Nabcor system, over and beyond any particular cars that we needed for our own area.

We were Nabcor of Western New York. We had talked about making Nabcor dealerships across the whole country as one name.

Q Who was going to take title?

A Mr. Maiorana would take title because he was the one that was issuing the MV50's for the cars under the Nabcor system.

BY MR. PERSON:

Q Were you contemplating being able to do the same thing?

A Yes, I was. I was getting a new car license so I could register new automobiles.

Q Were these automobile orders that you brought in considered in your discussions as part of the volume of automobiles which you inquired about?

A It was just an initial amount of orders to come.

Q Had you agreed upon any price?

A We talked fleet price.

Q What does that mean?

MR. KAPLAN: I object to that. Why can't

we just have what Mr. Strimple said to Mr. Laks rather than what his impression was of what fleet price was?

THE COURT: What was the talk about price? Was price talked about?

THE WITNESS: Price was talked about.

THE COURT: What was said about price?

THEWITNESS: We talked about $25 to $50 over factory invoice on established fleet price.

THE COURT: In so many words you sat down and said "We are offering to pay you $25 to $50 over invoice price or established fleet price," is that what you said?

THE WITNESS: Yes.

Q Is there anything else you can recall about the meeting, anything else that was said?

MR. KAPLAN: Objection. If it was said by the witness, we have no problem.

THE COURT: Overruled.

A We also told that we anticipated sales for Buick automobiles, which was the other franchise that we held in the family ,and we thought we had established the source of supply both for Buicks and Chevrolets.

Q Was there any agreement relating to that?

A It was a verbal agreement to sell, yes.

Q At this same meeting?

A Yes.

Q Who gave the agreement on the part of the Buick dealership?

A I'm not sure whether it was Laks Jr. or one of the younger Lakses. I'm not sure whether his name was Don or what. It was one of the Laks brothers.

Q Did you have any orders for Buicks at that time?

A No, I did not.

THE COURT: Do you recall what you said about the quantity of Buicks and so forth? What did you say about Buicks?

THE WITNESS: I said that we were definitely going to need, in my estimation, a substantial number of Buicks, but the greatest proportion of the purchases would be Chevrolets.

THE COURT: Did you name a figure as far as the quantity of Buicks?

THE WITNESS: No, I did not.

THE COURT: Was any discussion had about price for Buicks?

THE WITNESS: We were talking at that time about established fleet prices.

THE COURT: The words used were established fleet prices or were the word used specific dollar figures?

THE WITNESS: Chevrolets we were talking $25 to $50 or established fleet prices.

THE COURT: What was the discussion about Buicks?

THE WITNESS: The same.

THE COURT: $25 to $50?

THE WITNESS: No. Established fleet prices. We didn't get into actual dollars on Buicks because I didn't have any orders for Buicks at that time.

THE COURT: You may proceed.

BY MR. PERSON:

Q Do you recall anything else about your conversation at that time?

A Not at this time. I don't recall any particular thing.

Q Was Mr. Bolling there with you?

A Yes. I believe he was.

Q Do you know who else was there?

A No. I don't recall.

Q How long after this meeting did you have your next communication with any of the Lakses?

A It was within the next several days.

Q Who called whom?

A I'm not sure whether I called him or he called me.

Q Was it at this time that you were advised that Laks was unwilling to sell you any of the cars you had talked about?

A Yes.

THE COURT: It was Ray Laks?

THE WITNESS: I'm not sure which Laks it was who called or I talked to.

THE COURT: We are now getting into the conversation in detail. I would like to ask this:

Did whoever you spoke to specifically say they would not fill the specific orders you had given?

THE WITNESS: Yes, and they said they were not interested --

THE COURT: In doing any business, is that right?

THE WITNESS: Yes.

THE COURT: Proceed.

The dealer refused to comply and told the agent that it was his, the dealer's decision to refuse the order and that Chevrolet Motor Division had nothing to do with the transaction."

THE COURT: Can we go on with the questioning?

MR.PERSON: Yes.

BY MR. PERSON:

Q Mr. Strimple, did you have any communications with any dealers concerning the Buffalo Automobile Dealers Association Bulletin?

A Yes.

Q Can you name any dealer that you had discussed this with?

A Al Maroone Ford was one of them.

Jack Stevens Buick was another. I believe Bob Bain was another.

Q Do you recall when these conversations took place, approximately?

A All of this took place at the same period of time, within a very short period of time of each other.

THE COURT: What was that short period of time?

THE WITNESS: Between roughly October or

September of 1967 up until the beginning of 1968.

Q Who initiated the discussions concerning the bulletin?

MR. KAPLAN: I object to the form.

THE COURT: Sustained.

Q Do you recall who initiated the discussions concerning the BADA bulletin?

MR. KAPLAN: Objection.

THE COURT: Why don't you ask him what happened, what was the conversation?

Q In what context did the discussion --

THE COURT: Not what context, what happened?

Q What happened at Stevens Buick concerning the bulletin?

A I was --

MR. KAPLAN: Objection, your Honor, hearsay.

THE COURT: Overruled.

A I was trying to buy a Buick from Mr.Stevens Buick and he said that he wasn't interested in selling cars to the brokers and pulled out this bulletin.

Q Do you know of Al Maroone Ford?

MR. KAPLAN: Objection, your Honor. I don't know what Al Maroone Ford has to do with this case.

THE COURT: Yes, I think I will exclude Al

Maroone Ford.

Q The bulletin, 310 -- let me ask you instead of reading, was there any reference by the person at Stevens Buick to this bulletin, any specific language?

A Yes, used something like a rash of brokers or something like that in the conversation.

MR. PERSON: Exhibit 310, which pertains to Nabcor in general and others, begins with the heading, "A rash of auto brokers hits Buffalo," Exhibit 310 in evidence.

THE COURT: Next question.

Q Do you recall having a discussion with anyone at Clements-Gillogly concerning a Corvette?

A I talked to Clements-Gillogly about the Schmitt Corvette.

Q Who is Schmitt?

A Schmitt was the individual that we were trying to originally fill an automobile from the time that Multi-Make originally took the order.

Q Schmitt is on Defendants' Exhibit F-7 --

MR. PERSON: We have a stipulation that the customer, Joseph Schmitt, would testify if called that he entered into a purchase agreement for the Corvette with Multi-Make Auto Sales on August 25, 1967.

Q This preceded the October 7, 1967, agreement, but do you recall whether the Corvette order carried over to General?

A Yes, it did.

Q Did you have any discussions with any personnel of Clements-Gillogly concerning a Corvette from Mr. Schmitt?

A I can't recall that I had discussions with people at Clements-Gillogly. I think my discussion was with Mr. Schmitt, who had discussions with Clements-Gillogly.

Q You don't recall any of the discussions after that? Just if you can recall.

THE COURT: He said he couldn't.

A I can't even recall what Mr. Schmitt said.

Q Do you recall having any communications with Glenn Campbell Chevrolet concerning acquiring automobiles?

A Yes.

Q When did this occur?

A The same period of time.

THE COURT: What period of time are you speaking of?

THE WITNESS: Between September and December of 1967.

Q Do you recall who you spoke with?

A I talked to the sales manager.

Q Do you recall his name?

A I believe it was Tony Pieri.

2 Q What did the two of you talk about?

MR. KAPLAN: Excuse me, please note my objection.

THE COURT: Overruled.

A We talked about getting automobiles.

Q What did he say to you and what did you say to him?

A Specifically he said something like he couldn't sell --

THE COURT: What did you say to him?

THE WITNESS: I asked him if he would sell us cars and got a refusal that he couldn't deal with us.

Q Could you please state the whole conversation to the extent that you can recall it?

A The only thing that I can remember is talking to Mr. Pieri and asking him to sell us automobiles and ending up with a refusal.

I can't remember all of these exact sentences and everything that takes place eight or ten years ago.

Q Do you have any recollection of any communication with Dave Hallman Chevrolet?

A Yes.

THE COURT: What is the company?

MR. PERSON: Dave Hallman Chevrolet.

Q Who did you talk with?

A I believe I talked with a gentleman on the telephone by the name of Fisher.

Q When did this occur?

A I asked him --

THE COURT: When did it occur?

A The same period of time, which was in the Fall of 1967, in the Winter.

Q Can you please state what you said to him and what he said to you?

A I told him I was interested in mass purchases of automobiles.

Q Did you have a number in mind?

THE COURT: Did he express a number?

A I always talked in terms of a couple of hundred or more, for the system.

Q Did you have any orders with you?

A I talked to him on the telephone and he agreed to sell -- was interested in this business. Originally he agreed to sell for $125 over tissue.

And a couple of days later he said that he would deal for $250 over tissue, which is way in excess of fleet prices anywhere.

Q Was there anything --

MR. PERSON: It is hard to say, I don't want him to make any statements that will be objectionable. Do you object to the answer did he give you a reason?

THE COURT: Sustained.

Q Did he give you a reason?

A Yes.

THE COURT: You didn't buy from Dave Hallman Chevrolet?

THE WITNESS: No, I wasn't able to get cars from him.

Q Do you know Mr. Womack in Buffalo?

THE COURT: He already said he tried to get him on the phone. You never talked to Mr. Womack?

THE WITNESS: Never personally, no.

THE COURT: All right. Anything else?

Q With respect to this Exhibit F-7, do you know whether or not -- you have a copy of the exhibit up there?

A Yes.

Q If you look at the first entry, a Cadillac, do you know whether that Cadillac was ever received by Multi-Make or General?

A I think it ended up getting cancelled.

Q Do you know that?

A To the best of my recollection it was never received. We couldn't get it.

Q The Pontiac for a customer Casey?

A It was received.

Q The Chevrolet for a customer Stachura, from your own recollection do you recall?

A We couldn't get it. It was cancelled.

Q By whom?

A By the customer.

Q And the Corvette for Morawski?

A We couldn't get it and it was cancelled.

Q And the car for the customer Schmitt?

A We couldn't get it and it was cancelled.

Q Could you tell us what efforts you went through in order to obtain the Corvette for the customer Schmitt before the order was placed with Nabcor?

A Yes. I went to several different dealers including Laks.

Q Have you testified about these dealers already?

A I talked to Laks. This was one of the automobiles that I was trying to get from Laks.

I tried to get the car from Tony Pieri of Campbell Chevrolet. Mr. Schmitt ran around all dealers also.

Q Just what efforts,please. Please be responsive and we will move along quicker.

A I am sorry.

Q You were unable to get the car through any Buffalo dealer?

A Right.

Q You got the order during August, do you recall? We stipulated that would be --

THE COURT: He got the order?

MR. PERSON: Multi-Make got the order in August.

Q From the time of August 25 through November 13, 1967, you were unable to obtain a dealer for that car in Buffalo, is that correct?

A That is correct.

Q At that time --

A I also tried to have Nabcor get it for me.

Q Did you make any efforts in that respect prior to the date on which Exhibit F-7 indicates that the order for that Corvette was placed with Nabcor?

THE COURT: Exhibit F-7 doesn't have the date when the order was placed with Nabcor.

MR. PERSON: The date received I think we have been taking as the date.

MR. KAPLAN: That is the date Nabcor entered it in its log, November 13.

THE COURT: All right, November 13. I see. I didn't see the whole exhibit, I am sorry.

November 13 was the date when Nabcor entered the order in its log?

MR. PERSON: Correct.

Q Did you make any attempts with Nabcor to obtain this Corvette for Mr. Schmitt prior to the date of approximately November 13, 1967?

A Yes. I was in touch with Maiorana on everything that was happening in Buffalo, trying to get the particular car that we were able to fill.

Q Did you request the car?

A Yes, I asked him specifically for -- to see if he can get me the automobile because I could not get it.

Q What ultimately happened to the order for the Corvette for Mr. Schmitt?

A Mr. Schmitt drove his new Corvette over to my showroom that he picked up from Glenn Campbell and told me that --

Q Hold it. Did he tell you to cancel the order?

A Yes.

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Q Do you recall the automobile, the Chevrolet, that was ordered for Mr. Vosseler?

A I believe this got filled and I think it came in -- it was filled.

Q We have the purchase agreement dated October 20, 1967, and the log for Nabcor, that is the police book, which indicates a delivery date of February 26, 1968.

That's a period, I believe, of about 139 days.

THE COURT: What is that?

MR. PERSON: From the date of purchase agreement to the date --

THE COURT: What is the date of the purchase agreement?

MR. PERSON: 10/20/67.

THE COURT: And that's the Vosseler order?

MR. PERSON: Correct.

THE COURT: What is the 139th day?

MR. PERSON: February 26.

THE COURT: That's what?

MR. PERSON: 1968.

THE COURT: He got the car?

MR. PERSON: The car was delivered to

General in Buffalo.

BY MR. PERSON:

Q Do you know how the car was delivered?

A I believe it was driven from Philadelphia.

Q Do you recall who drove the vehicle?

A I think this was the period of time I went down and drove a car back. I'm not sure exactly.

Q Was this method of obtaining automobiles through Nabcor satisfactory to General?

A No way. I was used to having cars dropped off by truck at a dealership.

Q You had an automobile which you ordered during September for your daughter, if you can recall. It was on September 21, 1967. You placed that order with Nabcor; is that correct?

A That's true.

Q Yet with the other orders you went around to various dealers in Buffalo, from what I gather from your testimony?

A Yes.

Q Is there any reason why you placed the order for your daughter with Nabcor and did not bring that order around to the other dealers in the Buffalo area?

A Yes. I wanted to test Nabcor in the pricing of Nabcor itself?

Q What was the effect of General's inability to obtain --

THE COURT: I don't understand. I have had that read. You wanted to test Nabcor in the pricing of Nabcor itself? I don't understand that.

THE WITNESS: I wanted to test the delivery and what the car would actually cost me.

THE COURT: What was the test?

THE WITNESS: Well, I had never received a car from Nabcor and I wanted to order one.

THE COURT: That's the reason you ordered your daughter's car?

THE WITNESS: Yes, I wanted to get a test car.

THE COURT: I thought Mr. Person was asking you why you tried to place the orders in Buffalo instead of placing them with Nabcor.

MR. PERSON: No. The reverse of that. I wanted to know why he did it with one car, to Nabcor, and not with the others.

THE WITNESS: I wanted a test model. My daughter being as close as we are, she would not give me any problems with delivery or anything. I wanted to see what would take place.

Q Was there any effect that General's inability to obtain cars in the Buffalo area had together with delays in delivery to General had on the business?

MR. KAPLAN: Objection.

THE COURT: Overruled.

A Read that question back.

Q Was there any effect on General's business as a result of General's inability to obtain cars, as you testified, in the Buffalo area and also the inability to obtain from Nabcor and any delays in getting cars from Nabcor? Was there any effect on General's business?

A Very drastically.

Q Describe that.

MR. KAPLAN: Same objection, for the record.

THE COURT: Overruled.

A Without being able to get a supply of automobiles I could not go into my franchising because I was trying to sell 50 counties in the State of New York. I couldn't do anything. I was stopped cold.

Q Was there any financial effect that this had?

A Yes. The gas bills kept going and the rent and payrolls, and if I didn't have any income it continued.

Q Are you saying you didn't have any income?

A That's right. And the bills still came.

Q Did there come a time in which you had insufficient capital to conduct the business activities of General?

A Yes.

Q When did that occur, approximately?

A I would say I finally folded my curtains around the last of '69 or early '70.

THE COURT: When in '69?

THE WITNESS: I don't remember the exact date, your Honor.

Q You testified you advertised --

THE COURT: Was it late or early?

THE WITNESS: I believe it was late '69.

THE COURT: Any more questions?

MR. PERSON: Just a few, your Honor.

BY MR. PERSON:

Q You testified that you were soliciting people